Subtitle B—Regulations Relating to Commerce and Foreign Trade (Continued)

CHAPTER III—INTERNATIONAL TRADE ADMINISTRATION, DEPARTMENT OF COMMERCE

SUBCHAPTER A—MISCELLANEOUS REGULATIONS

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PART 300 [RESERVED]

PART 301—INSTRUMENTS AND APPARATUS FOR EDUCATIONAL AND SCIENTIFIC INSTITUTIONS

Sec.

AUTHORITY: Sec. 6(c), Pub. L. 89–651, 80 Stat. 897, 899; Sec. 2402, Pub. L. 106–36, 113 Stat. 127, 168; 19 U.S.C. 1514(c)(3)); and Presidential Proclamation 7011, signed on June 30, 1997.

SOURCE: 47 FR 32517, July 28, 1982, unless otherwise noted.

§ 301.1 General provisions.

(a) *Purpose.* This part sets forth the regulations of the Department of Commerce and the Department of the Treasury applicable to the duty-free importation of scientific instruments and apparatus by public or private nonprofit institutions.

(b) *Background.* (1) The Agreement on the importation of Educational, Scientific and Cultural Materials (Florence Agreement; ''the Agreement'') is a multinational treaty, which seeks to further the cause of peace through the freer exchange of ideas and knowledge across national boundaries, primarily by eliminating tariffs on certain educational, scientific and cultural materials.

(2) Annex D of the Agreement provides that scientific instruments and apparatus intended exclusively for educational purposes or pure scientific research use by qualified nonprofit institutions shall enjoy duty-free entry if instruments or apparatus of equivalent scientific value are not being manufactured in the country of importation.

(3) The Annex D provisions are implemented for U.S. purposes in Subchapter X, Chapter 98, Harmonized Tariff Schedule of the United States (HTSUS).

(c) *Summary of statutory procedures and requirements.* (1) U.S. Note 1, Subchapter X, Chapter 98, HTSUS, provides, among other things, that articles covered by subheadings 9810.00.60 (scientific instruments and apparatus), 9810.00.65 (repair components therefor) and 9810.00.67 (tools for maintaining and testing the above), HTSUS, must be exclusively for the use of the institutions involved and not for distribution, sale, or other commercial use within five years after entry. These articles may be transferred to another qualified nonprofit institution, but any commercial use within five years of entry shall result in the assessment of applicable duties pursuant to §301.9(c).

(2) An institution wishing to enter an instrument or apparatus under tariff subheading 9810.00.60, HTSUS, must file an application with the Customs and Border Protection in accordance with the regulations in this section. If the application is made in accordance with the regulations, notice of the application is published in the FEDERAL REGISTER to provide an opportunity for interested persons and government agencies to present views. The application is reviewed by the Secretary of Commerce (Director, Statutory Import Programs Staff) , who decides whether or not duty-free entry may be accorded the instrument and publishes the decision in the FEDERAL REGISTER. An appeal of the final decision may be filed with the U.S. Court of Appeals for the Federal Circuit, on questions of law only, within 20 days after publication in the FEDERAL REGISTER.

(3) Repair components for instruments or apparatus admitted duty-free under subheading 9810.00.60, HTSUS require no application and may be entered duty-free in accordance with the procedures prescribed in § 301.10.

(4) Tools specifically designed to be used for the maintenance, checking, gauging or repair of instruments or apparatus admitted under subheadings 9810.00.65 and 9810.00.67, HTSUS, require no application and may be entered duty-free in accordance with the procedures prescribed in § 301.10.

(d) *Authority and delegations.* The Act authorizes the Secretaries of Commerce and the Treasury to prescribe joint regulations to carry out their functions under U.S. Note 6, Subchapter X, Chapter 98, HTSUS. The Secretary of the Treasury has delegated authority to the Assistant Secretary for Enforcement, who has retained rulemaking authority and further delegated administration of the regulations to the Commissioner of the Customs and Border Protection. The authority of the Secretary of Commerce has been delegated to the Assistant Secretary for Enforcement and Compliance who has retained rulemaking authority and further delegated administration of the regulations to the Director of the Statutory Import Programs Staff.

[47 FR 32517, July 28, 1982; 47 FR 34368, Aug. 9, 1982, as amended at 66 FR 28832, May 25, 2001; 74 FR 30463, June 26, 2009; 78 FR 72571, Dec. 3, 2013]

§ 301.2 Definitions.

For the purposes of these regulations and the forms used to implement them:

(a) *Director* means the Director of the Statutory Import Programs Staff, International Trade Administration, U.S. Department of Commerce.

(b) *The Commissioner* means Commissioner of Customs and Border Protection, or the official(s) designated to act on the Commissioner's behalf.

(c) *CBP Port''* or *the Port* means the port where a particular claim has been or will be made for duty-free entry of a scientific instrument or apparatus under subheading 9810.00.60, HTSUS.

(d) *Entry* means entry of an instrument into the Customs territory of the United States for consumption or withdrawal of an instrument from a Customs bonded warehouse for consumption.

(e) *United States* includes only the several States, the District of Columbia and the Commonwealth of Puerto Rico.

(f) *Instrument* means instruments and apparatus specified in U.S. Note 6(a), Subchapter X, Chapter 98, HTSUS. A combination of basic instrument or apparatus and accompanying accessories shall be treated as a single instrument provided that, under normal commercial practice, such combination is considered to be a single instrument and provided further that the applicant has ordered or, upon favorable action on its application, firmly intends to order the combination as a unit. The term ''instrument'' also covers separable components of an instrument that are imported for assembly in the United States in such instrument where that instrument, due to its size, cannot feasibly be imported in its assembled state. The components, as well as the assembled instrument itself, must be classifiable under the tariff provisions listed in U.S. Note 6(a), Subchapter X, Chapter 98, HTSUS. See paragraph (k) of this section and § 301.3(f). Unless the context indicates otherwise, instrument or apparatus shall mean a foreign ''instrument or apparatus'' for which duty-free entry is sought under subheading 9810.00.60, HTSUS. Spare parts typically ordered and delivered with an instrument are also considered part of an instrument for purposes of these regulations. The term ''instruments'' shall not include:

(1) Materials or supplies used in the operation of instruments and apparatus such as paper, cards, tapes, ink, recording materials, expendable laboratory materials, apparatus that loses identity or is consumed by usage or other materials or supplies.

(2) Ordinary equipment for use in building construction or maintenance; or equipment for use in supporting activities of the institution, such as its administrative offices, machine shops, libraries, centralized computer facilities, eating facilities, or religious facilities; or support equipment such as copying machines, glass working apparatus and film processors.

(3) General purpose equipment such as air conditioners, electric typewriters, electric drills, refrigerators.

(4) General-purpose computers. Accessories to computers which are not eligible for duty-free treatment are also ineligible. Scientific instruments containing embedded computers which are to be used in a dedicated process or in instrument control, as opposed to general data processing or computation, are, however, eligible for duty-free consideration.

(5) Instruments initially imported solely for testing or review purposes which were entered under bond under subheading 9813.00.30, HTSUS, subject to the provisions of U.S. Note 1(a), Subchapter XIII, Chapter 98, HTSUS, and must be exported or destroyed within the time period specified in that U.S. Note.

(g) *Domestic instrument* means an instrument which is manufactured in the United States. A domestic instrument need not be made exclusively of domestic components or accessories.

(h) *Accessory* has the meaning which it has under normal commercial usage. An accessory, whether part of an instrument or an attachment to an instrument, adds to the capability of an instrument. An accessory for which duty-free entry is sought under subheading 9810.00.60, HTSUS shall be the subject of a separate application when it is not an accompanying accessory. The existing instrument, for which the accessory is being purchased, may be domestic or, if foreign, it need not have entered duty free under subheading 9810.00.60, HTSUS.

(i) *Accompanying accessory* means an accessory for an instrument that is listed as an item in the same purchase order and that is necessary for accomplishment of the purposes for which the instrument is intended to be used.

(j) *Ancillary equipment* means an instrument which may be functionally related to the foreign instrument but is not operationally linked to it. Examples of ancillary equipment are vacuum evaporators or ultramicrotomes, which can be used to prepare specimens for electron microscopy. Further, equipment which is compatible with the foreign instrument, but is also clearly compatible with similar domestic instruments, such as a vacuum evaporator sold for use with an electron microscope, will be treated as ancillary equipment. A separate application will be required for ancillary equipment even if ordered with the basic instrument.

(k) *Components* of an instrument means parts or assemblies of parts which are substantially less than the instrument to which they relate. A component enables an instrument to function at a specified minimum level, while an accessory adds to the capability of an instrument. Applications shall not be accepted for components of instruments that did not enter duty-free under subheading 9810.00.60, HTSUS or for components of instruments being manufactured or assembled by a commercial firm or entity in the U.S. In determining whether an item is a component ineligible for duty-free consideration or an accessory eligible for such consideration, Customs and Border Protection shall take into account such factors as the item's complexity, novelty, degree of integration and pertinency to the research purposes to be performed by the instrument as a whole. The above notwithstanding, separable components of some instruments may be eligible for duty-free treatment. See paragraph (f) of this section.

(l) *Produced for stock* means an instrument which is manufactured, on sale and available from a stock.

(m) *Produced on order* means an instrument which a manufacturer lists in current catalog literature and is able and willing to produce and have available without unreasonable delay to the applicant.

(n) *Custom-made* means an instrument which a manufacturer is willing and able to make to purchaser's specifications. Instruments resulting from a development effort are treated as custom-made for the purposes of these regulations. Also, a special-order variant of a produced on order instrument, with significant modifications specified by the applicant, may be treated as custom-made.

(o) *Same general category* means the category in which an instrument is customarily classified in trade directories and product-source lists, e.g.,

scanning electron microscope, x-ray spectrometer, light microscope, x-ray spectrometer.

(p) *Comparable domestic instrument* means a domestic instrument capable or potentially capable of fulfilling the applicant's technical requirements or intended uses, whether or not in the same general category as the foreign instrument.

(q) *Specifications* means the particulars of the structural, operational and performance characteristics or capabilities of a scientific instrument.

(r) *Guaranteed* specifications are those specifications which are an explicit part of the contractual agreement between the buyer and the seller (or which would become part of the agreement if the buyer accepted the seller's offer), and refer only to the minimum and routinely achievable performance levels of the instrument under specified conditions. If a capability is listed or quoted as a range (e.g., ''5 to 10 nanometers'') or as a minimum that may be exceeded (e.g., ''5 angstroms or better''), only the inferior capability may be considered the guaranteed specification. Evidence that specifications are ''guaranteed'' will normally consist of their being printed in a brochure or other descriptive literature of the manufacturer; being listed in a purchase agreement upon which the purchase is conditioned; or appearing in a manufacturer's formal response to a request for quote. If, however, no opportunity to submit a bid was afforded the domestic manufacturer or if, for any other reason, comparable guaranteed specifications of the foreign and domestic instruments do not appear on the record, other evidence relating to a manufacturer's ability to provide an instrument with comparable specifications may, at the discretion of the Director, be considered in the comparison of the foreign and domestic instruments' capabilities. Performance results on a test sample run at the applicant's request may be cited as evidence for or against a guaranteed specification.

(s) *Pertinent* specifications are those specifications necessary for the accomplishment of the specific scientific research or science-related educational purposes described by the applicant. Specifications of features (even if guaranteed) which afford greater convenience, satisfy personal preferences, accommodate institutional commitments or limitations, or assure lower costs of acquisition, installation, operation, servicing or maintenance are not pertinent. For example, a design feature, such as a small number of knobs or controls on an instrument primarily designed for research purposes, would be a convenience. The ability to fit an instrument into a small room, when the required operations could be performed in a larger room, would be either a cost consideration or a matter of convenience and not a pertinent specification. In addition, mere difference in design (which would, for example, broaden the educational experience of students but not provide superior scientific capability) would not be pertinent. Also, characteristics such as size, weight, appearance, durability, reliability, complexity (or simplicity), ease of operation, ease of maintenance, productivity, versatility, ''state of the art'' design, specific design and compatibility with currently owned or ordered equipment are not pertinent unless the applicant demonstrates that the characteristic is necessary for the accomplishment of its scientific purposes.

[47 FR 32517, July 28, 1982; 47 FR 34368, Aug. 9, 1982, as amended at 66 FR 28832, May 25, 2001; 74 FR 30463, June 26, 2009]

§ 301.3 Application for duty-free entry of scientific instruments.

(a) *Who may apply.* An applicant for duty-free entry of an instrument under subheading 9810.00.60, HTSUS must be a public or private nonprofit institution which is established for educational or scientific purposes and which has placed a bona fide order or has a firm intention to place a bona fide order for a foreign instrument within 60 days following a favorable decision on the institution's application.

(b) *Application forms.* Applications must be made on form ITA–338P which may be obtained from the Statutory Import Programs Staff, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, the Web site at *http://ia.ita.doc.gov/sips/index.html*, or from the

various District Offices of the U.S. Department of Commerce.

(c) *Where to apply.* Applications must be filed with the U.S. Customs and Border Protection, at the address specified on page 1 of the form.

(d) Five copies of the form, including relevant supporting documents, must be submitted. One of these copies shall be signed in the original by the person in the applicant institution under whose direction and control the foreign instrument will be used and who is familiar with the intended uses of the instrument. The remaining four copies of the form may be copies of the original. Attachments should be fully identified and referenced to the question(s) on the form to which they relate.

(e) A single application (in the requisite number of copies) may be submitted for any quantity of the same type or model of foreign instrument provided that the entire quantity is intended to be used for the same purposes and provided that all units are included on a single purchase order. A separate application shall be submitted for each different type or model or variation in the type or model of instrument for which duty-free entry is sought even if covered by a single purchase order. Orders calling for multiple deliveries of the same type or model of instrument over a substantial period of time may, at the discretion of the Director, require multiple applications.

(f) An application for components of an instrument to be assembled in the United States as described in § 301.2(f) may be filed provided that all of the components for the complete, assembled instrument are covered by, and fully described in, the application. See also § 301.2(k).

(g) Failure to answer completely all questions on the form in accordance with the instructions on the form or to supply the requisite number of copies of the form and supporting documents may result in delays in processing of the application while the deficiencies are remedied, return of the application without processing, or denial of the application without prejudice to resubmission. Any questions on these regulations or the application form should be addressed to the Director.

(Approved by the Office of Management and Budget under control number 0625–0037)

[47 FR 32517, July 28, 1982, as amended at 50 FR 11501, Mar. 22, 1985; 66 FR 28833, May 25, 2001; 74 FR 30463, June 26, 2009]

§ 301.4 Processing of applications by the Department of the Treasury (Customs and Border Protection).

(a) *Review and determination.* The Commissioner shall date each application when received by Customs and Border Protection. If the application appears to be complete, the Commissioner shall determine:

(1) Whether the institution is a nonprofit private or public institution established for research and educational purposes and therefore authorized to import instruments into the U.S. under subheading 9810.00.60, HTSUS. In making this determination, the Commissioner may require applicants to document their eligibility under this paragraph;

(2) Whether the instrument or apparatus falls within the classes of instruments eligible for duty-free entry consideration under subheading 9810.00.60, HTSUS. For eligible classes, see U.S. Note 6(a), Subchapter X, Chapter 98, HTSUS; and

(3) Whether the instrument or apparatus is for the exclusive use of the applicant institution and is not intended to be used for commercial purposes. For the purposes of this section, commercial uses would include, but not necessarily be limited to: Distribution, lease or sale of the instrument by the applicant institution; any use by, or for the primary benefit of, a commercial entity; or use of the instrument for demonstration purposes in return for a fee, price discount or other valuable consideration. Evaluation, modification or testing of the foreign instrument, beyond normal, routine acceptance testing and calibration, to enhance or expand its capabilities primarily to benefit the manufacturer in return for a discount or other valuable consideration, may be considered a commercial benefit. In making the above determination, the Commissioner may consider, among other

things, whether the results of any research to be performed with the instrument will be fully and timely made available to the public. For the purposes of this section, use of an instrument for the treatment of patients is considered noncommercial.

If any of the Commissioner's determinations is in the negative, the application shall be found to be outside the scope of the Act and shall be returned to the applicant with a statement of the reason(s) for such findings.

(b) *Forwarding of applications to the Department of Commerce.* If the Commissioner finds the application to be within the scope of the Act and these regulations, the Commissioner shall (1) assign a number to the application and (2) forward one copy to the Secretary of the Department of Health and Human Services (HHS), and two copies, including the one that has been signed in the original, to the Director. The Commissioner shall retain one copy and return the remaining copy to the applicant stamped ''Accepted for Transmittal to the Department of Commerce.'' The applicant shall file the stamped copy of the form with the Port when formal entry of the article is made. If entry has already occurred under a claim of subheading 9810.00.60, HTSUS , the applicant (directly or through his/her agent) shall at the earliest possible date supply the stamped copy to the Port. Further instructions for entering instruments are contained in § 301.8 of the regulations.

[47 FR 32517, July 28, 1982; 47 FR 34368, Aug. 9, 1982, as amended at 50 FR 11501, Mar. 22, 1985; 66 FR 28833, May 25, 2001; 74 FR 30463, June 26, 2009]

§ 301.5 Processing of applications by the Department of Commerce.

(a) *Public notice and opportunity to present views.* (1) Within 5 days of receipt of an application from the Commissioner, the Director shall make a copy available for public inspection during ordinary business hours of the Department of Commerce. Unless the Director determines that an application has deficiencies which preclude consideration on its merits (e.g., insufficient description of intended purposes to rule on the scientific equivalency of the foreign instrument and potential domestic equivalents), he shall publish in the FEDERAL REGISTER a notice of the receipt of the application to afford all interested persons a reasonable opportunity to present their views with respect to the question ''whether an instrument or apparatus of equivalent scientific value for the purpose for which the article is intended to be used is being manufactured in the United States.'' The notice will include the application number, the name and address of the applicant, a description of the instrument(s) for which duty-free entry is requested, the name of the foreign manufacturer and a brief summary of the applicant's intended purposes extracted from the applicant's answer to question 7 of the application. In addition, the notice shall specify the date the application was accepted by the Commissioner for transmittal to the Department of Commerce.

(2) If the Director determines that an application is incomplete or is otherwise deficient, he may request the applicant to supplement the application, as appropriate, prior to publishing the notice of application in the FEDERAL REGISTER. Supplemental information/material requested under this provision shall be supplied to the Director in two copies within 20 days of the date of the request and shall be subject to the certification on the form. Failure to provide the requested information on time shall result in a denial of the application without prejudice to resubmission pursuant to paragraph (e) of this section.

(3) *Requirement for presentation of views (comments) by interested persons.* Any interested person or government agency may make written comments to the Director with respect to the question whether an instrument of equivalent scientific value, for the purposes for which the foreign instrument is intended to be used, is being manufactured in the United States. Except for comments specified in paragraph (a)(4) of this section, comments should be in the form of supplementary answers to the applicable questions on the application form. Comments must be postmarked no later than 20 days from the date on which the notice of

application is published in the FEDERAL REGISTER. In order to be considered, comments and related attachments must be submitted to the Director in duplicate; shall state the name, affiliation and address of the person submitting the comment; and shall specify the application to which the comment applies. In order to preserve the right to appeal the Director's decision on a particular application pursuant to § 301.6 of these regulations, a domestic manufacturer or other interested person must make timely comments on the application. Separate comments should be supplied on each application in which a person has an interest. However, brochures, pamphlets, printed specifications and the like, included with previous comments, if properly identified, may be incorporated by reference in subsequent comments.

(4) *Comments by domestic manufacturers.* Comments of domestic manufacturers opposing the granting of an application should:

(i) Specify the domestic instrument considered to be scientifically equivalent to the foreign article for the applicant's specific intended purposes and include documentation of the domestic instrument's guaranteed specifications and date of availability.

(ii) Show that the specifications claimed by the applicant in response to question 8 to be pertinent to the intended purpose can be equaled or exceeded by those of the listed domestic instrument(s) whether or not it has the same design as the foreign instrument; that the applicant's alleged pertinent specifications should not be considered pertinent within the meaning of § 301.2(s) of the regulations for the intended purposes of the instrument described in response to question 7 of the application; or that the intended purposes for which the instrument is to be used do not qualify the instrument for duty-free consideration under the Act.

(iii) Where the comments regarding paragraphs (a)(4)(i) and (a)(4)(ii) of this section relate to a particular accessory or optional device offered by a domestic manufacturer, cite the type, model or other catalog designation of the accessory device and include the specification therefor in the comments.

(iv) Where the justification for duty-free entry is based on excessive delivery time, show whether:

(A) The domestic instrument is as a general rule either produced for stock, produced on order, or custom-made and;

(B) An instrument or apparatus of equivalent scientific value to the article, for the purposes described in response to question 7, could have been produced and delivered to the applicant within a reasonable time following the receipt of the order.

(v) Indicate whether the applicant afforded the domestic manufacturer an opportunity to furnish an instrument or apparatus of equivalent scientific value to the article for the purposes described in response to question 7 and, if such be the case, whether the applicant issued an invitation to bid that included the technical requirements of the applicant.

(5) *Untimely comments.* Comments must be made on a timely basis to ensure their consideration by the Director and the technical consultants, and to preserve the commenting person's right to appeal the Director's decision. The Director, at his discretion, may take into account factual information contained in untimely comments.

(6) *Provision of general comments.* A domestic manufacturer who does not wish to oppose duty-free entry of a particular application, but who desires to inform the Director of the availability and capabilities of its instrument(s), may at any time supply documentation to the Director without reference to a particular application. Such documentation shall be taken into account by the Director when applications involving comparable foreign instruments are received. The provision of general comments does not preserve the provider's right to appeal the Director's decision.

(b) *Additions to the record.* The Director may solicit from the applicant, from foreign or domestic manufacturers, their agents, or any other person or Government agency considered by the Director to have related competence, any additional information the Director considers necessary to make a decision. The Director may attach conditions and time limitations

upon the provision of such information and may draw appropriate inferences from a person's failure to provide the requested information.

(c) *Advice from technical consultants.* (1) The Director shall consider any written advice from the Secretary of HHS, or his delegate, on the question whether a domestic instrument of equivalent scientific value to the foreign instrument, for the purposes for which the instrument is intended to be used, is being manufactured in the United States.

(2) After the comment period has ended (§ 301.5(a)(3)), the complete application and any comments received and related information are forwarded to appropriate technical consultants for their advice.

(3) The technical consultants relied upon for advice include, but are not limited to, the National Institutes of Health (delegated the function by the Secretary of HHS), the National Institute of Standards and Technology and the National Oceanographic and Atmospheric Administration.

(d) *Criteria for the determinations of the Department of Commerce*—(1) *Scientific equivalency*. (i) The determination of scientific equivalency shall be based on a comparison of the pertinent specifications of the foreign instrument with similar pertinent specifications of comparable domestic instruments (see § 301.2(s) for the definition of pertinent specification). Ordinarily, the Director will consider only those performance characteristics which are ''guaranteed specifications'' within the meaning of § 301.2(r) of this part. In no event, however, shall the Director consider performance capabilities superior to the manufacturer's guaranteed specifications or their equivalent. In making the comparison the Director may consider a reasonable combination of domestic instruments that brings together two or more functions into an integrated unit if the combination of domestic instruments is capable of accomplishing the purposes for which the foreign instrument is intended to be used. If the Director finds that a domestic instrument possesses all of the pertinent specifications of the foreign instrument, he shall find that there is being manufactured in the United States an instrument of equivalent scientific value for such purposes as the foreign instrument is intended to be used. If the Director finds that the foreign instrument possesses one or more pertinent specifications not possessed by the comparable domestic instrument, the Director shall find that there is not being manufactured in the United States an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument is intended to be used.

(ii) Programs that may be undertaken at some unspecified future date shall not be considered in the Director's comparison. In making the comparison, the Director shall consider only the instrument and accompanying accessories described in the application and determined eligible by the Customs and Border Protection. The Director shall not consider the planned purchase of additional accessories or the planned adaptation of the article at some unspecified future time.

(iii) In order for the Director to make a determination with respect to the ''scientific equivalency'' of the foreign and domestic instruments, the applicant's intended purposes must include either scientific research or science-related educational programs. Instruments used exclusively for nonscientific purposes have no scientific value, thereby precluding the requisite finding by the Director with respect to ''whether an instrument or apparatus of equivalent scientific value to such article, for the purposes for which the article is intended to be used, is being manufactured in the United States.'' In such cases the Director shall deny the application for the reason that the instrument has no scientific value for the purposes for which it is intended to be used. Examples of nonscientific purposes would be the use of an instrument in routine diagnosis or patient care and therapy (as opposed to clinical research); in teaching a nonscientific trade (e.g., printing, shoemaking, metalworking or other types of vocational training); in teaching nonscientific courses (e.g., music, home economics, journalism, drama); in presenting a variety of subjects or merely for presenting coursework, whether or not science related (e.g., video tape editors,

tape recorders, projectors); and in conveying cultural information to the public (e.g., a planetarium in the Smithsonian Institution).

(2) *Manufactured in the United States.* An instrument shall be considered as being manufactured in the United States if it is customarily ''produced for stock,'' ''produced on order'' or ''custom-made'' within the United States. In determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case. For example, in determining whether a domestic manufacturer is able to produce a custom-made instrument, the Director may take into account the production experience of the domestic manufacturer including (i) the types, complexity and capabilities of instruments the manufacturer has produced, (ii) the extent of the technological gap between the instrument to which the application relates and the manufacturer's customary products, (iii) the manufacturer's technical skills, (iv) the degree of saturation of the manufacturer's production capability, and (v) the time required by the domestic manufacturer to produce the instrument to the purchaser's specification. Whether or not the domestic manufacturer has field tested or demonstrated the instrument will not, in itself, enter into the decision regarding the manufacturer's ability to manufacture an instrument. Similarly, in determining whether a domestic manufacturer is willing to produce an instrument, the Director may take into account the nature of the bid process, the manufacturer's policy toward manufacture of the product(s) in question, the minimum size of the manufacturer's production runs, whether the manufacturer has bid similar instruments in the past, etc. Also, if a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument.

(3) *Burden of proof.* The burden of proof shall be on the applicant to demonstrate that no instrument of equivalent scientific value for the purposes for which the foreign instrument is to be used is being manufactured in the United States. Evidence of applicant favoritism towards the foreign manufacturer (advantages not extended to domestic firms, such as additional lead time, know-how, methods, data on pertinent specifications or intended uses, results of research or development, tools, jigs, fixtures, parts, materials or test equipment) may be, at the Director's discretion, grounds for rejecting the application.

(4) *Excessive delivery time.* Duty-free entry of the instrument shall be considered justified without regard to whether there is being manufactured in the United States an instrument of equivalent scientific value for the intended purposes if excessive delivery time for the domestic instrument would seriously impair the accomplishment of the applicant's intended purposes. For purposes of this section, (i) except when objective and convincing evidence is presented that, at the time of order, the actual delivery time would significantly exceed quoted delivery time, no claim of excessive delivery time may be made unless the applicant has afforded the domestic manufacturer an opportunity to quote and the delivery time for the domestic instrument exceeds that for the foreign instrument; and (ii) failure by the domestic manufacturer to quote a specific delivery time shall be considered a non-responsive bid (see § 301.5(d)(2)). In determining whether the difference in delivery times cited by the applicant justifies duty-free entry on the basis of excessive delivery time, the Director shall take into account (A) the normal commercial practice applicable to the production of the general category of instrument involved; (B) the efforts made by the applicant to secure delivery of the instruments (both foreign

and domestic) in the shortest possible time; and (C) such other factors as the Director finds relevant under the circumstances of a particular case.

(5) *Processing of applications for components.* (i) The Director may process an application for components which are to be assembled in the United States into an instrument or apparatus which, due to its size, cannot be imported in its assembled state (see §301.2(k)) as if it were an application for the assembled instrument. A finding by the Director that no equivalent instrument is being manufactured in the United States shall, subject to paragraph (d)(5)(ii) of this section, qualify all the associated components, provided they are entered within the period established by the Director, taking into account both the scientific needs of the importing institution and the potential for development of related domestic manufacturing capacity.

(ii) Notwithstanding a finding under paragraph (d)(5)(i) of this section that no equivalent instrument is being manufactured in the United States, the Director shall disqualify a particular component for duty-free treatment if the Director finds that the component is being manufactured in the United States.

(e) Denial without prejudice to resubmission (DWOP). The Director may, at any stage in the processing of an application by the Department of Commerce, DWOP an application if it contains any deficiency which, in the Director's judgment, prevents a determination on its merits. The Director shall state the deficiencies of the application in the DWOP letter to the applicant.

(1) The applicant has 60 days from the date of the DWOP to correct the cited deficiencies in the application unless a request for an extension of time for submission of the supplemental information has been received by the Director prior to the expiration of the 60-day period and is approved.

(2) If granted, extensions of time will generally be limited to 30 days.

(3) Resubmissions must reference the application number of the earlier submission. The resubmission may be made by letter to the Director. The record of a resubmitted application shall include the original submission on file with the Department. Any new material or information contained in a resubmission, which should address the specific deficiencies cited in the DWOP letter, should be clearly labeled and referenced to the applicable question on the application form. The resubmission must be for the instrument covered by the original application unless the DWOP letter specifies to the contrary. The resubmission shall be subject to the certification made on the original application.

(4) If the applicant fails to resubmit within the applicable time period, the prior DWOP shall, irrespective of the merits of the case, result in a denial of the application.

(5) The Director shall use the postmark date of the fully completed resubmission in determining whether the resubmission was made within the allowable time period. Certified or registered mail, or some other means which can unequivocally establish the date of mailing, is recommended. Resubmission by fax, e-mail or other electronic means is acceptable provided an appropriate return number or address is provided in the transmittal. Resubmissions must clearly indicate the date of transmittal to the Director.

(6) The applicant may, at any time prior to the end of the resubmission period, notify the Director in writing that it does not intend to resubmit the application. Upon such notification, the application will be deemed to have been withdrawn. (See §301.5(g).)

(7) Information provided in a resubmission that, in the judgment of the Director, contradicts or conflicts with information provided in a prior submission, or is not a reasonable extension of the information contained in the prior submission, shall not be considered in making the decision on an application that has been resubmitted. Accordingly, an applicant may elect to reinforce an orginal submission by elaborating in the resubmission on the description of the purposes contained in a prior submission and may supply additional examples, documentation and/or other clarifying detail, but the applicant shall not introduce new purposes

or other material changes in the nature of the original application. The resubmission should address the specific deficiencies cited in the DWOP. The Director may draw appropriate inferences from the failure of an applicant to attempt to provide the information requested in the DWOP.

(8) In the event an applicant fails to address the noted deficiencies in the response to the DWOP, the Director may deny the application.

(f) *Decisions on applications.* The Director shall prepare a written decision granting or denying each application. However, when he deems appropriate, the Director may issue a consolidated decision on two or more applications. The Director shall promptly forward a copy of the decision to each applicant institution and to the FEDERAL REGISTER for publication.

(g) *Withdrawal of applications.* The Director shall discontinue processing an application withdrawn by the applicant and shall publish notice of such withdrawal in the FEDERAL REGISTER. If at any time while its application is pending before the Director, either during the intital application or resubmission stage, an applicant cancels an order for the instrument to which the application relates or ceases to have a firm intention to order such instrument or apparatus, the institution shall promptly notify the Director. Such notification shall constitute a withdrawal. Withdrawals shall be considered as having been finally denied for purposes of § 301.7(c) below.

(h) Nothing in this subsection shall be construed as limiting the Director's discretion at any stage of processing to insert into the record and consider in making his decision any information in the public domain which he deems relevant.

[47 FR 32517, July 28, 1982; 47 FR 34368, Aug. 9, 1982, as amended at 50 FR 11501, Mar. 22, 1985; 66 FR 28833, May 25, 2001; 74 FR 30463, June 26, 2009]

§ 301.6 Appeals.

(a) An appeal from a final decision made by the Director under § 301.5(f) may be taken in accordance with U.S. Note 6(e), Subchapter X, Chapter 98, HTSUS, only to the U.S. Court of Appeals for the Federal Circuit and only on questions of law, within 20 days after publication of the decision in the FEDERAL REGISTER. If at any time while its application is under consideration by the Court of Appeals on an appeal from a finding by the Director an institution cancels an order for the instrument to which the application relates or ceases to have a firm intention to order such instrument, the institution shall promptly notify the court.

(b) An appeal may be taken by: (1) The institution which makes the application;

(2) A person who, in the proceeding which led to the decision, timely represented to the Secretary of Commerce in writing that he/she manufactures in the United States an instrument of equivalent scientific value for the purposes for which the instrument to which the application relates is intended to be used;

(3) The importer of the instrument, if the instrument to which the application relates has been entered at the time the appeal is taken; or

(4) An agent of any of the foregoing.

(c) Questions regarding appeal procedures should be addressed directly to the U.S. Court of Appeals for the Federal Circuit, Clerk's Office, Washington, DC 20439.

[47 FR 32517, July 28, 1982, as amended at 66 FR 28834, May 25, 2001]

§ 301.7 Final disposition of an application.

(a) Disposition of an application shall be final when 20 days have elapsed after publication of the Director's final decision in the FEDERAL REGISTER and no appeal has been taken pursuant to § 301.6 of these regulations, of if such appeal has been taken, when final judgment is made and entered by the Court.

(b) The Director shall notify the CBP Port when disposition of an application becomes final. If the Director has not been advised of the port of entry of the instrument, or if entry has not been made when the decision on the application becomes final, the Director shall notify the Commissioner of final disposition of the application.

(c) An instrument, the duty-free entry of which has been finally denied,

may not be the subject of a new application from the same institution.

[47 FR 32517, July 28, 1982, as amended at 66 FR 28834, May 25, 2001; 74 FR 30463, June 26, 2009]

§ 301.8 Instructions for entering instruments through Customs and Border Protection under subheading 9810.00.60, HTSUS.

Failure to follow the procedures in this section may disqualify an instrument for duty-free entry notwithstanding an approval of an application on its merits by the Department of Commerce.

(a) *Entry procedures.* (1) An applicant desiring duty-free entry of an instrument may make a claim at the time of entry of the instrument into the Customs territory of the United States (as defined in 19 CFR 101.1) that the instrument is entitled to duty-free classification under subheading 9810.00.60, HTSUS.

(2) If no such claim is made the instrument shall be immediately classified without regard to subheading 9810.00.60, HTSUS , duty will be assessed, and the entry liquidated in the ordinary course.

(3) If a claim is made for duty-free entry under subheading 9810.00.60, HTSUS , the entry shall be accepted without requiring a deposit of estimated duties provided that a copy of the form, stamped by Customs and Border Protection as accepted for transmittal to the Department of Commerce in accordance with §301.4(b), is filed simultaneously with the entry.

(4) If a claim for duty-free entry under subheading 9810.00.60, HTSUS is made but is not accompanied by a copy of the properly stamped form, a deposit of the estimated duty is required. Before the entry is liquidated, the applicant must file with the CBP Port a properly stamped copy of the application form. In the event that the CBP Port does not receive a copy of the properly stamped application form before liquidation, the instrument shall be classified and liquidated in the ordinary course, without regard for subheading 9810.00.60, HTSUS.

(5) Entry of an instrument after the Director's approval of an application. Whenever an institution defers entry until after it receives a favorable final determination on the application for duty-free entry of the instrument, either by delaying importation or by placing the instrument in a bonded warehouse or foreign trade zone, the importer shall file with the entry of the instrument (i) the stamped copy of the form, (ii) the institution's copy of the favorable final determination and (iii) proof that a bona fide order for the merchandise was placed on or before the 60th day after the favorable decision became final pursuant to §301.7 of these regulations. Liquidation in such case shall be made under subheading 9810.00.60, HTSUS.

(b) *Normal Customs and Border Protection entry requirements.* In addition to the entry requirements in paragraph (a) of this section, the normal Customs and Border Protection entry requirements must be met. In most of the cases, the value of the merchandise will be such that the formal Customs and Border Protection entry requirements, which generally include the filing of a Customs entry bond, must be complied with. (For further information, see 19 CFR 142.3 and 142.4 (TD–221).)

(c) *Late filing.* Notwithstanding the preceding provisions of this section any document, form, or statement required by regulations in this section to be filed in connection with the entry may be filed at any time before liquidation of the entry becomes final, provided that failure to file at the time of entry or within the period for which a bond was filed for its production was not due to willful negligence or fraudulent intent. Liquidation of any entry becomes conclusive upon all persons if the liquidation is not protested in writing in accordance with 19 CFR part 174, or the necessary document substantiating duty-free entry is not produced in accordance with 19 CFR 10.112. Upon notice of such final and conclusive liquidation, the Department of Commerce will cease the processing of any pending application for duty-free entry of the subject article. In all other respects, the provisions of this section do not apply to Department of Commerce responsibilities and procedures for processing applications pursuant to other sections of these regulations.

(d) *Payment of duties.* The importer of record will be billed for payment of duties when Customs and Border Protection determines that such payment is due. If a refund of a deposit made pursuant to paragraph (a)(4) of this section is due, the importer should contact Customs and Border Protection officials at the port of entry, not the Department of Commerce.

[47 FR 32517, July 28, 1982, as amended at 66 FR 28834, May 25, 2001; 74 FR 30463, June 26, 2009]

§ 301.9 Uses and disposition of instruments entered under subheading 9810.00.60, HTSUS.

(a) An instrument granted duty-free entry may be transferred from the applicant institution to another eligible institution provided the receiving institution agrees not to use the instrument for commercial purposes within 5 years of the date of entry of the instrument. In such cases title to the instrument must be transferred directly between the institutions involved. An institution transferring a foreign instrument entered under subheading 9810.00.60, HTSUS within 5 years of its entry shall so inform the CBP Port in writing and shall include the following information:

(1) The name and address of the transferring institution.

(2) The name and address of the transferee.

(3) The date of transfer.

(4) A detailed description of the instrument.

(5) The serial number of the instrument and any accompanying accessories.

(6) The entry number, date of entry, and port of entry of the instrument.

(b) Whenever the circumstances warrant, and occasionally in any event, the fact of continued use for 5 years for noncommercial purposes by the applicant institution shall be verified by Customs and Border Protection.

(c) If an instrument is transferred in a manner other than specified above or is used for commercial purposes within 5 years of entry, the institution for which such instrument was entered shall promptly notify the Customs and Border Protection officials at the Port and shall be liable for the payment of duty in an amount determined on the basis of its condition as imported and the rate applicable to it.

[47 FR 32517, July 28, 1982, as amended at 66 FR 28834, May 25, 2001; 74 FR 30463, June 26, 2009]

§ 301.10 Importation of repair components and maintenance tools under HTSUS subheadings 9810.00.65 and 9810.00.67 for instruments previously the subject of an entry liquidated under subheading 9810.00.60, HTSUS.

(a) An institution owning an instrument that was the subject of an entry liquidated duty-free under subheading 9810.00.60, HTSUS, that wishes to enter repair components or maintenance tools for that instrument may do so without regard to the application procedures required for entry under subheading 9810.00.60, HTSUS. The institution must certify to Customs and Border Protection officials at the port of entry that such components are repair components for that instrument under subheading 9810.00.65, HTSUS, or that the tools are maintenance tools necessary for the repair, checking, gauging or maintenance of that instrument under subheading 9810.00.67, HTSUS.

(b) Instruments entered under subheading 9810.00.60, HTSUS, and subsequently returned to the foreign manufacturer for repair, replacement or modification are not covered by subheading 9810.00.65 or 9810.00.67, HTSUS, although they may, upon return to the United States, be eligible for a reduced duty payment under subheading 9802.00.40 or 9802.00.50, HTSUS (covering articles exported for repairs or alterations) or may be made the subject of a new application under subheading 9810.00.60, HTSUS.

[66 FR 28834, May 25, 2001, as amended at 74 FR 30463, June 26, 2009]

PART 302 [RESERVED]

PART 303—WATCHES, WATCH MOVEMENTS AND JEWELRY PROGRAM

Subpart A—Watches and Watch Movements

Subpart B—Jewelry

AUTHORITY: Pub. L. 97–446, 96 Stat. 2331 (19 U.S.C. 1202, note); Pub. L. 103–465, 108 Stat. 4991; Pub. L. 94–241, 90 Stat. 263 (48 U.S.C. 1681, note); Pub. L. 106–36, 113 Stat. 167; Pub. L. 108–429, 118 Stat. 2582.

SOURCE: 49 FR 17740, Apr. 25, 1984, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 303 appear at 68 FR 56555, Oct. 1, 2003.

Subpart A—Watches and Watch Movements

§ 303.1 Purpose.

(a) This part implements the responsibilities of the Secretaries of Commerce and the Interior (''the Secretaries'') under Pub. L. 97–446, enacted on 12 January 1983, which substantially amended Pub. L. 89–805, enacted 10 November 1966, amended by Pub. L. 94–88, enacted 8 August 1975, and amended by Pub. L. 94–241, enacted 24 March 1976, amended by Public Law 103–465, enacted 8 December 1994 and amended by Public Law 108–429 enacted 3 December 2004. The law provides for exemption from duty of territorial watches and watch movements without regard to the value of the foreign materials they contain, if they conform with the provisions of U.S. Legal Note 5 to Chapter 91 of the Harmonized Tariff Schedule of the United States (''91/5''). 91/5 denies this benefit to articles containing any material which is the product of any country with respect to which Column 2 rates of duty apply; authorizes the Secretaries to establish the total quantity of such articles, provided that the quantity so established does not exceed 10,000,000 units or one-ninth of apparent domestic consumption, whichever is greater, and provided also that the quantity is not decreased by more than ten percent nor increased by more than twenty percent (or to more than 7,000,000 units, whichever is greater) of the quantity established in the previous year.

(b) The law directs the International Trade Commission to determine apparent domestic consumption for the preceding calendar year in the first year U.S. insular imports of watches and watch movements exceed 9,000,000 units. 91/5 authorizes the Secretaries to establish territorial shares of the overall duty-exemption within specified limits; and provides for the annual allocation of the duty-exemption among insular watch producers equitably and on the basis of allocation criteria, including minimum assembly requirements, that will reasonably maximize the net amount of direct economic benefits to the insular possessions.

(c) The amended law also provides for the issuance to producers of certificates entitling the holder (or any transferee) to obtain duty refunds on any article imported into the customs territory of the United States duty paid except for any article containing a material which is the product of a country to which column 2 rates of duty apply. The amounts of these certificates may not exceed specified percentages of the producers' verified

creditable wages in the insular possessions (90% of wages paid for the production of the first 300,000 units and declining percentages, established by the Secretaries, of wages paid for incremental production up to 750,000 units by each producer) nor an aggregate annual amount for all certificates exceeding $5,000,000 adjusted for growth by the ratio of the previous year's gross national product to the gross national product in 1982. Refund requests are governed by regulations issued by the Department of Homeland Security. The Secretaries are authorized to issue regulations necessary to carry out their duties under additional U.S. note 5 to chapter 91 of the Harmonized Tariff Schedule of the United States, HTSUS and may cancel or restrict the license or certificate of any insular manufacturer found violating the regulations.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985; 53 FR 52994, Dec. 30, 1988; 61 FR 55884, Oct. 30, 1996; 70 FR 67647, Nov. 8, 2005; 72 FR 16713, Apr. 5, 2007]

§ 303.2 Definitions and forms.

(a) *Definitions.* Unless the context indicates otherwise:

(1) *Act* means Pub. L. 97–446, enacted January 12, 1983 (19 U.S.C. 1202), 96 Stat. 2329, as amended at Pub. L. 103–465, enacted on December 8, 1994, 108 Stat. 4991, Public Law 108–429, enacted on 3 December 2004, 118 Stat. 2582.

(2) *Secretaries* means the Secretary of Commerce and the Secretary of Interior or their delegates, acting jointly.

(3) *Director* means the Director of the Statutory Import Programs Staff, International Trade Administration, U.S. Department of Commerce.

(4) *Sale or tranfer of a business* means the sale or transfer of control, whether temporary or permanent, over a firm to which a duty-exemption has been allocated, to any other firm, corporation, partnership, person or other legal entity by any means whatsoever, including, but not limited to, merger and transfer of stock, assets or voting trusts.

(5) New firm is a watch firm not affiliated through ownership or control with any other watch duty-refund recipient. In assessing whether persons or parties are affiliated, the Secretaries will consider the following factors, among others: stock ownership; corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The Secretaries may not find that control exists on the basis of these factors unless the relationship has the potential to affect decisions concerning production, pricing, or cost. Also, no watch duty-refund recipient may own or control more than one jewelry duty-refund recipient. A new entrant is a new watch firm which has received an allocation.

(6) *Producer* means a duty-exemption holder which has maintained its eligibility for further allocations by complying with these regulations.

(7) *Established industry* means all producers, including new entrants, that have maintained their eligibility for further allocations.

(8) *Territories, territorial, and insular possessions* refer to the insular possessions of the United States (i.e., the U.S. Virgin Islands, Guam, and American Samoa and the Northern Mariana Islands).

(9) *Duty-exemption* refers to the authorization of duty-free entry of a specified number of watches and watch movements into the Customs Territory of the United States.

(10) *Total annual duty-exemption* refers to the entire quantity of watches or watch movements which may enter duty-free into the customs territory of the United States from the territories under 91/5 in a calendar year, as determined by the Secretaries or by the International Trade Commission in accordance with the Act.

(11) *Territorial distribution* refers to the apportionment by the Secretaries of the total annual duty-exemption among the separate territories; *territorial share* means the portion consigned to each territory by this apportionment.

(12) *Allocation* refers to the distribution of all parts of a territorial share, or a portion thereof, among the several producers in a territory.

(13) Creditable wages and associated, creditable fringe benefits and creditable duty differentials eligible for the duty refund benefit include, but are not limited to, the following:

(i) Wages up to an amount equal to 65 percent of the contribution and benefit base for Social Security, as defined in the Social Security Act for the year in which wages were earned, paid to permanent residents of the insular possessions employed in a firm's 91/5 watch and watch movement program.

(A) Wages paid for the repair of watches up to an amount equal to 85 percent of the firm's total creditable wages.

(B) Wages paid to watch and watch movement assembly workers involved in the complete assembly of watches and watch movements which have entered the United States duty-free and have complied with the laws and regulations governing the program.

(C) Wages paid to watch and watch movement assembly workers involved in the complete assembly of watches, excluding the movement, only in situations where the desired movement can not be purchased unassembled and the producer has documentation establishing this.

(D) Wages paid to those persons engaged in the day-to-day assembly operations on the premises of the company office, wages paid to administrative employees working on the premises of the company office, wages paid to security employees and wages paid to servicing and maintenance employees if these services are integral to the assembly and manufacturing operations and the employees are working on the premises of the company office.

(E) Wages paid to persons engaged in both creditable and non-creditable assembly and repair operations may be credited proportionally provided the firm maintains production, shipping and payroll records adequate for the Departments' verification of the creditable portion.

(F) Wages paid to new permanent residents who have met the requirements of permanent residency in accordance with the Departments' regulations, along with meeting all other creditable wage requirements of the regulations, which must be documented and verified to the satisfaction of the Secretaries.

(ii) The combined creditable amount of individual health and life insurance per year, for each full-time permanent resident employee who works on the premises of the company office and whose wages qualify as creditable, may not exceed 130 percent of the ''weighted average'' yearly federal employee health insurance, which is calculated from the individual health plans weighted by the number of individual contracts in each plan. The yearly amount is calculated by the Office of Personnel Management and includes the ''weighted average'' of all individual health insurance costs for federal employees throughout the United States. The maximum life insurance allowed within this combined amount is $50,000 for each employee. Only during the time employees are earning creditable wages are they entitled to health and life insurance duty refund benefits under the program.

(A) The combined creditable amount of family health and life insurance per year, for each full-time permanent resident employee who works on the premises of the company office and whose wages qualify as creditable, may not exceed 150 percent of the ''weighted average'' yearly federal employee health insurance, which is calculated from the family health plans weighted by the number of family contracts in each plan. The yearly amount is calculated by the Office of Personnel Management and includes the ''weighted average'' of all family health insurance costs for federal employees throughout the United States. The maximum life insurance allowed within this combined amount is $50,000 for each employee. Only during the time employees are earning creditable wages are they entitled to health and life insurance duty refund benefits under the program.

(B) The creditable pension benefit, for each full-time permanent resident employee who works on the premises of the company office and whose wages qualify as creditable, is up to 3 percent of the employee's wages unless the employee's wages exceed the maximum annual creditable wage allowed under the program (see paragraph (a)(13)(i) of this section). An employee earning more than the maximum creditable wage allowed under the program will be eligible for only 3 percent of the maximum creditable wage. Only during

the time employees are earning creditable wages are they entitled to pension duty refund benefits under the program.

(iii) If tariffs on watches and watch movements are reduced, then companies would be required to provide the annual aggregate data by individual HTSUS watch tariff numbers for the following components contained therein: the quantity and value of watch cases, the quantity of movements, the quantity and value of each type of strap, bracelet or band, and the quantity and value of batteries shipped free of duty into the United States. If discrete watch movements are shipped free of duty into the United States, then the annual aggregate quantity by individual HTSUS movement tariff numbers would also be required along with the value of each battery if it is contained within. These data would be used to calculate the annual duty rate before each HTSUS tariff reduction, and the annual duty rate after the HTSUS tariff reduction. The amount of the difference would be creditable toward the duty refund. The tariff information would only be collected and used in the calculation of the annual duty-refund certificate and would not be used in the calculation of the mid-year duty-refund.

(14) Non-creditable wages and associated non-creditable fringe benefits ineligible for the duty refund benefit include, but are not limited to, the following:

(i) Wages over 65 percent of the contribution and benefit base for Social Security, as defined in the Social Security Act for the year in which wages were earned, paid to permanent residents of the territories employed in a firm's 91/5 watch and watch movement program.

(A) Wages paid for the repair of watches in an amount over 85 percent of the firm's total creditable wages.

(B) Wages paid for the assembly of watches and watch movements which are shipped outside the customs territory of the United States; wages paid for the assembly of watches and watch movements that do not meet the regulatory assembly requirements; or wages paid for the assembly of watches or watch movements that contain HTSUS column 2 components.

(C) Wages paid for the complete assembly of watches, excluding the movement, when the desired movement can be purchased unassembled, if the producer does not have adequate documentation, demonstrating to the satisfaction of the Secretaries, that the movement could not be purchased unassembled whether or not it is entering the United States.

(D) Wages paid to persons not engaged in the day-to-day assembly operations on the premises of the company office; wages paid to any outside consultants; wages paid to outside the office personnel, including but not limited to, lawyers, gardeners, construction workers, and accountants; wages paid to employees not working on the premises of the company office; and wages paid to employees who do not qualify as permanent residents in accordance with the Departments' regulations.

(E) Wages paid to persons engaged in both creditable and non-creditable assembly and repair operations if the producer does not maintain production, shipping and payroll records adequate for the Departments' verification of the creditable portion.

(ii) Any costs, for the year in which the wages were paid, of the combined creditable amount of individual health and life insurance for employees over 130 percent of the ''weighted average'' yearly individual health insurance costs for all federal employees. The cost of any life insurance over the $50,000 limit for each employee. Any health and life insurance costs during the time an employee is not earning creditable wages.

(A) Any costs, for the year in which the wages were paid, of the combined creditable amount of family health and life insurance for employees over 150 percent of the ''weighted average'' yearly family health insurance costs for all federal employee. The cost of any life insurance over the $50,000 limit for each employee. Any health and life insurance costs during the time an employee is not earning creditable wages.

(B) Any pension benefits that were not based on associated creditable wages. The cost of any pension benefit

per employee over 3 percent of the employee's creditable wages unless the employee's wages exceed the maximum annual creditable annual maximum creditable wage allowed under the program (see paragraph (a)(13)(i) of this section). Employees earning over the maximum creditable wage allowed under the program would have a creditable annual pension benefit of up to 3 percent of the maximum creditable wage and wages over 3 percent of the maximum creditable wage would not be creditable.

(15) *Non-91/5 watches and watch movements* include, but are not limited to, watches and movements which are liquidated as dutiable by the Bureau of Customs and Border Protection but do not include, for purposes of the duty refund, watches that are completely assembled in the insular possessions, with the exception of a desired movement if the movement cannot be purchased in an unassembled condition; contains any material which is the product of any country with respect to which Column 2 rates of duty apply; are ineligible for duty-free treatment pursuant to law or regulation; or are units the assembly of which the Departments have determined not to involve substantial and meaningful work in the territories (as elsewhere defined in these regulations).

(16) *Discrete movements and components* means screws, parts, components and subassemblies not assembled together with another part, component or subassembly at the time of importation into the territory. (A mainplate containing set jewels or shock devices, together with other parts, would be considered a single discrete component, as would a barrel bridge subassembly.)

(17) *Permanent resident* means a person with one residence which is in the insular possessions or a person with one or more residences outside the insular possessions who meets criteria that include maintaining his or her domicile in the insular possessions, residing (*i.e.*, be physically present for at least 183 days within a continuous 365 day period) and working in the territory at a program company, and maintaining his or her primary office for day-to-day work in the insular possessions.

(b) *Forms*—(1) *ITA–334P ''Application for License to Enter Watches and Watch Movements into the Customs Territory of the United States.''* This form must be completed annually by all producers desiring to receive an annual allocation. It is also used, with appropriate special instructions for its completion, by new firms applying for duty-exemptions and by producers who wish to receive the duty refund in installments on a biannual basis.

(2) *ITA–333 ''License to Enter Watches and Watch Movements into the Customs Territory of the United States.''* This form is issued by the Director to producers who have received an allocation and constitutes authorization for issuing specific shipment permits by the territorial governments. It is also used to record the balance of a producer's remaining duty-exemptions after each shipment permit is issued.

(3) *ITA–340 ''Permit to Enter Watches and Watch Movements into the Customs Territory of the United States.''* This form may be obtained, by producers holding a valid license, from the territorial government or may be produced by the licensee in an approved computerized format or any other medium or format approved by the Departments of Commerce and the Interior. The completed form authorizes duty-free entry of a specified amount of watches or watch movements at a specified U.S. Customs port.

(4) *ITA–360P ''Certificate of Entitlement to Secure the Refund of Duties on Articles that Entered the Customs Territory of The United State Duty Paid.''* This document authorizes an insular watch producer to request the refund of duties on imports of articles that entered the customs territory of the United States duty paid, up to the specified value of the certificate. Certificates may be used to obtain duty refunds only when presented with a properly executed Form ITA–361P.

(5) *ITA–361P ''Request for Refund of Duties on Articles that Entered the Customs Territory of the United States Duty Paid.''* This form must be completed to obtain the refund of duties authorized by the Director through Form ITA–

360P. After authentication by the Department of Commerce, it may be used for the refund of duties on items which were entered into the customs territory of the United States duty paid during a specified time period. Copies of the appropriate Customs entries must be provided with this form to establish a basis for issuing the claimed amounts. The forms may also be used to transfer all or part of the producer's entitlement to another party. (See § 303.12.)

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985; 53 FR 52994, Dec. 30, 1988; 56 FR 9621, Mar. 7, 1991; 61 FR 55884, 55885, Oct. 30, 1996; 65 FR 8049, Feb. 17, 2000; 66 FR 34812, July 2, 2001; 67 FR 77408, Dec. 18, 2002; 68 FR 56555, Oct. 1, 2003; 70 FR 67647, Nov. 8, 2005; 72 FR 16714, Apr. 5, 2007; 73 FR 62881, Oct. 22, 2008]

§ 303.3 Determination of the total annual duty-exemption.

(a) *Procedure for determination.* If, after considering the productive capacity of the territorial watch industry and the economic interests of the territories, the Secretaries determine that the amount of the total annual duty-exemption, or the territorial shares of the total amount, should be changed, they shall publish in the FEDERAL REGISTER a proposed limit on the quantity of watch units which may enter duty-free into the customs territory of the United States and proposed territorial shares thereof and, after considering comments, establish the limit and shares by FEDERAL REGISTER notice. If the Secretaries take no action under this section, they shall make the allocations in accordance with the limit and shares last established by this procedure.

(b) *Standards for determination.* (1) Notwithstanding paragraph (b)(2) of this section, the limit established for any year may be 7,000,000 units if the limit established for the preceding year was a smaller amount.

(2) Subject to paragraph (c) of this section, the total annual duty-exemption shall not be decreased by more than 10% of the quantity established for the preceding calendar year, or increased, if the resultant total is larger than 7,000,000, by more than 20% of the quantity established for the calendar year immediately preceding.

(3) The Secretaries shall determine the limit after considering the interests of the territories; the domestic or international trade policy objectives of the United States; the need to maintain the competitive nature of the territorial industry; the total contribution of the industry to the economic well-being of the territories; and the territorial industry's utilization of the total duty-exemption established in the preceding year.

(c) *Determinations based on consumption.* (1) The Secretaries shall notify the International Trade Commission whenever they have reason to believe duty-free watch imports from the territories will exceed 9,000,000 units, or whenever they make a preliminary determination that the total annual duty-exemption should exceed 10,000,000 units.

(2) In addition to the limitations in paragraph (b) of this section, the Secretaries shall not establish a limit exceeding one-ninth of apparent domestic consumption if such consumption, as determined by International Trade Commission, exceeds 90 million units.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 7170, Feb. 21, 1985; 50 FR 43568, Oct. 28, 1985; 53 FR 52994, Dec. 30, 1988]

§ 303.4 Determination of territorial distribution.

(a) *Procedure for determination.* The Secretaries shall determine the territorial shares concurrently with their determination of the total annual duty exemption, and in the same manner (see § 303.3, above).

(b) *Standards for determination*—(1) *Limitations.* A territorial share may not be reduced by more than 500,000 units in any calendar year. No territorial share shall be less than 500,000 units.

(2) *Criteria for setting precise quantities.* The Secretaries shall determine the precise quantities after considering, *inter alia,* the territorial capacity to produce and ship watch units. The Secretaries shall further bear in mind the aggregate benefits to the territories, such as creditable wages paid, creditable wages per unit exported, and corporate income tax payments.

(3) *Limitations on reduction of share.* The Secretaries shall not reduce a territory's share if its producers use 85%

or more of the quantity distributed to that territory in the immediately preceding year, except in the case of a major increase or decrease in the number of producers in a territory or if they believe that a territorial industry will decrease production by more than 15% from the total of the preceding year.

(4) *Standby redistribution authority.* The Secretaries may redistribute territorial shares if such action is warranted by circumstances unforeseen at the time of the initial distributions, such as that a territory will use less than 80% of its total by the end of a calendar year, or if a redistribution is necessary to maintain the competitive nature of the territorial industries.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 7170, Feb. 21, 1985]

§ 303.5 Application for annual allocations of duty-exemptions and duty-refunds.

(a) Application forms (ITA–334P) shall be furnished to producers by January 1, and must be completed and returned to the Director no later than January 31, of each calendar year.

(b) All data supplied are subject to verification by the Secretaries and no allocation or duty-refund certificate shall be made to producer until the Secretaries are satisfied that the data are accurate. To verify the data, representatives of the Secretaries shall have access to relevant company records including:

(1) Work sheets used to answer all questions on the application form;

(2) Original records from which such data are derived;

(3) Records pertaining to ownership and control of the company and to the satisfaction of eligibility requirements of duty-free treatment of its product by the Bureau of Customs and Border Protection;

(4) Records pertaining to corporate income taxes, gross receipts taxes and excise taxes paid by each producer in the territories on the basis of which a portion of each producer's annual allocation is or may be predicated;

(5) Customs, bank, payroll, including time cards, production records, and all shipping records including the importer of record number and proof of residency, as requested;

(6) Records on purchases of components, including documentation on the purchase of any preassembled movements, which demonstrate that such movements could not have been purchased from the vendor in an unassembled condition, and records on the sales of insular watches and movements, including proof of payment; and

(7) Any other records in the possession of the parent or affiliated companies outside the territory pertaining to any aspect of the producer's 91/5 watch assembly operation.

(8) All records pertaining to health insurance, life insurance and pension benefits for each employee; and

(9) If HTSUS tariffs on watches and watch movements are reduced, records of the annual aggregate data by individual HTSUS watch tariff numbers for the following components contained therein would be required: the quantity and value of watch cases; the quantity of movements; the quantity and value of each type of strap, bracelet or band; and the quantity and value of batteries shipped free of duty into the United States. In addition, if applicable, records of the annual aggregate quantity of discrete watch movements shipped free of duty into the United States by HTSUS tariff number.

(c) Data verification shall be performed in the territories, unless other arrangements satisfactory to the Departments are made in advance, by the Secretaries' representatives by the end of February of each calendar year. It is the responsibility of each program producer to make the appropriate data available to the Departments' officials for the calendar year for which the annual verification is being performed and no further data, from the calendar year for which the audit is being completed, will be considered for benefits at any time after the audit has been completed. In the event of discrepancies between the application and substantiating data before the audit is complete, the Secretaries shall determine which data will be used in the calculation of the duty refund and allocations.

(d) Records subject to the requirements of paragraph (b), above, shall be

retained for a period of two years following their creation.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985; 53 FR 52994, Dec. 30, 1988; 68 FR 56556, Oct. 1, 2003; 70 FR 67648, Nov. 8, 2005; 72 FR 16714, Apr. 5, 2007]

§ 303.6 Allocation and reallocation of exemptions among producers.

(a) *Interim allocations.* As soon as practicable after January 1 of each year the Secretaries shall make an interim allocation to each producer equaling 70% of the number of watch units it has entered duty-free into the customs territory of the United States during the first eight months of the preceding calendar year, or any lesser amount requested in writing by the producer. The Secretaries may also issue a lesser amount if, in their judgment, the producer might otherwise receive an interim allocation in an amount greater than the producer's probable annual allocation. In calculating the interim allocations, the Director shall count only duty-free watches and watch movements verified by the Bureau of Customs and Border Protection, or verified by other means satisfctory to the Secretaries, as having been entered on or before August 31 of the preceding year. Interim allocations shall not be published.

(b) *Annual allocations.* (1) By March 1 of each year the Secretaries shall make annual allocations to the producers in accordance with the allocation formula based on data supplied in their annual application (Form ITA–334P) and verified by the Secretaries.

(2) The excess of a producer's duty-exemption earned under the allocation criteria over the amount formally requested by the producer shall be considered to have been relinquished voluntarily (see paragraph (f) below). A producer's request may be modified by written communication received by the Secretaries by February 28, or, at the discretion of the Secretaries, before the annual allocations are made. An allocation notice shall be published in the FEDERAL REGISTER.

(c) *Supplemental allocations.* At the request of a producer, the Secretaries may supplement a producer's interim allocation if the Secretaries determine the producer's interim allocation will be used before the Secretaries can issue the annual allocation. Allocations to supplement a producer's annual allocation shall be made under the reallocation provisions prescribed below.

(d) *Allocations to new entrants.* In making interim and annual allocations to producers selected the preceding year as new entrants, the Secretaries shall take into account that such producers will not have had a full year's operation as a basis for computation of its duty-exemption. The Secretaries may make an interim or annual allocation to a new entrant even if the firm did not operate during the preceding calendar year.

(e) *Special allocations.* A producer may request a special allocation if unusual circumstances kept it from making duty-free shipments at a level comparable with its past record. In considering such requests, the Secretaries shall take into account the firm's proposed assembly operations; its record in contributing to the territorial economy; and its intentions and capacity to make meaningful contributions to the territory. They shall also first determine that the amount of the special allocation requested will not significantly affect the amounts allocated to other producers pursuant to § 303.6(b)(1).

(f) *Reallocations.* Duty-exemptions may become available for reallocation as a result of cancellation or reduction for cause, voluntary relinquishment or nonplacement of duty-exemption set aside for new entrants. At the request of a producer, the Secretaries may reallocate such duty-exemptions among the remaining producers who can use additional quantities in a manner judged best for the economy of the territories. The Secretaries shall consider such factors as the wage and income tax contributions of the respective producers during the preceding year and the nature of the producer's present assembly operations. In addition, the Secretaries may consider other factors which, in their judgment, are relevant to determining that applications from new firms, in lieu of reallocations, should be considered for part or all of unused portions of the total duty exemptions. Such factors may include:

(1) The ability of the established industry to use the duty-exemption;

(2) Whether the duty-exemption is sufficient to support new entrant operations;

(3) The impact upon the established industry if new entrants are selected, particularly with respect to the effect on local employment, tax contributions to the territorial government, and the ability of the established industry to maintain satisfactory production levels; and

(4) Whether additional new entrants offer the best prospect for adding economic benefits to the territory.

(g) Section 303.14 of this part contains the criteria and formulae used by the Secretaries in calculating each watch producer's annual watch duty-exemption allocation, and other special rules or provisions the Secretaries may periodically adopt to carry out their responsibilities in a timely manner while taking into account changing circumstances. References to duty-exemptions, unless otherwise indicated, are to the amount available for reallocation in the current calendar year. Specifications of or references to data or bases used in the calculation of current year allocations (e.g., economic contributions and shipments) are, unless indicated otherwise, those which were generated in the previous year.

(h) The Secretaries may propose changes to §303.14 at any time they consider it necessary to fulfill their responsibilities. Normally, such changes will be proposed towards the end of each calendar year. Interested parties shall be given an opportunity to submit written comments on proposed changes.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985; 61 FR 55885, Oct. 30, 1996; 63 FR 5888, Feb. 5, 1998]

§303.7 Issuance of licenses and shipment permits.

(a) *Issuance of Licenses (ITA–333).* (1) Concurrently with annual allocations under §303.5 the Director shall issue a non-transferable license (Form ITA–333) to each producer. The Director shall also issue a replacement license if a producer's allocation is reduced pursuant to §303.6.

(2) Annual duty-exemption licenses shall be for only that portion of a producer's annual duty-exemption not previously licensed.

(3) If a producer's duty-exemption has been reduced, the Director shall not issue a replacement license for the reduced amount until the producer's previous license has been received for cancellation by the Director.

(4) A producer's license shall be used in their entirety, except when they expire or are cancelled, in order of their date of issuance, i.e., an interim license must be completely used before shipment permits can be issued against an interim supplemental license.

(5) Outstanding licenses issued by the Director automatically expire at midnight, December 31, of each calendar year. No unused allocation of duty-exemption may be carried over into the subsequent calendar year.

(6) The Director shall ensure that all licenses issued are conspicuously marked to show the type of license issued, the identity of the producer, and the year for which the license is valid. All licenses shall bear the signature of the Director.

(7) Each producer is responsible for the security of its licenses. The loss of a license shall be reported immediately to the Director. Defacing, tampering with, and unauthorized use of a license are forbidden.

(b) *Shipment Permit Requirements (ITA–340).* (1) Producers may obtain shipment permits from the territorial government officials designated by the Governor. Permits may also be produced in any computerized or other format or medium approved by the Departments. The permit is for use against a producer's valid duty-exemption license and a permit must be completed for every duty-free shipment.

(2) Each permit must specify the license and permit number, the number of watches and watch movements included in the shipment, the unused balance remaining on the producer's license, pertinent shipping information and must have the certification statement signed by an official of the licensee's company. A copy of the completed permit must be sent electronically or taken to the designated territorial government officials, no later than the day

of shipment, for confirmation that the producer's duty-exemption license has not been exceeded and that the permit is properly completed.

(3) The permit (form ITA–340) shall be filed with Customs along with the other required entry documents to receive duty-free treatment unless the importer or its representative clears the documentation through Customs' automated broker interface. Entries made electronically do not require the submission of a permit to Customs, but the shipment data must be maintained as part of a producer's recordkeeping responsibilities for the period prescribed by Customs' recordkeeping regulations. Bureau of Customs and Border Protection Import Specialists may request the documentation they deem appropriate to substantiate claims for duty-free treatment, allowing a reasonable amount of time for the importer to produce the permit.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985; 61 FR 55885, Oct. 30, 1996]

§ 303.8 Maintenance of duty-exemption entitlements.

(a) The Secretaries may order a producer to show cause within 30 days of receipt of the order why the duty-exemption to which the firm would otherwise be entitled should not be cancelled, in whole or in part, if:

(1) At any time after June 30 of the calendar year:

(i) A producer's assembly and shipment record provides a reasonable basis to conclude that the producer will use less than 80 percent of its total allocation by the end of the calendar year, *and*

(ii) The producer refuses a request from the Departments to relinquish that portion of its allocation which they conclude will not be used; *or*

(2) A producer fails to satisfy or fulfill any term, condition or representation, whether undertaken by itself or prescribed by the Departments, upon which receipt of allocation has been predicated or upon which the Departments have relied in connection with the sale or transfer of a business together with its allocation; *or*

(3) A producer, in the judgment of the Secretaries, has failed to make a meaningful contribution to the territory for a period of two or more consecutive calendar years, when compared with the performance of the duty-free watch assembly industry in the territory as a whole. This comparison shall include the producer's quantitative use of its allocations, amount of direct labor employed in the assembly of watches and watch movements, and the net amount of corporate income taxes paid to the government of the territory. If the producer fails to satisfy the Secretaries as to why such action should not be taken, the firm's allocation shall be reduced or cancelled, whichever is appropriate under the show-cause order. The eligibility of a firm whose allocation has been cancelled to receive further allocations may also be terminated.

(b) The Secretaries may also issue a show-cause order to reduce or cancel a producer's allocation or production incentive certificate (see § 303.12, below), as appropriate, or to declare the producer ineligible to receive an allocation or certificate if it violates any regulation in this part, uses a form, license, permit, or certificate in an unauthorized manner, or fails to provide information or data required by these regulations or requested by the Secretaries or their delegates in the performance of their responsibilities.

(c) If a firm's allocation is reduced or cancelled, or if a firm voluntarily relinquishes a part of its allocation, the Secretaries may:

(1) Reallocate the allocation involved among the remaining producers in a manner best suited to contribute to the economy of the territory;

(2) Reallocate the allocation or part thereof to a new entrant applicant; or

(3) Do neither of the above if deemed in the best interest of the territories and the established industry.

[49 FR 17740, Apr. 25, 1984, as amended at 61 FR 55885, Oct. 31, 1996]

§ 303.9 Restrictions on the transfer of duty-exemptions.

(a) The sale or transfer of a duty-exemption from one firm to another shall not be permitted.

(b) The sale or transfer of a business together with its duty-exemption shall

be permitted with prior written notification to the Departments. Such notification shall be accompanied by certifications and representations, as appropriate, that:

(1) If the transferee is a subsidiary of or in any way affiliated with any other company engaged in the production of watch movements components being offered for sale to any territorial producer, the related company or companies will continue to offer such watch and watch movement components on equal terms and conditions to all willing buyers and shall not engage in any practice, in regard to the sale of components, that competitively disadvantages the non-affiliated territorial producers *vis-a-vis* the territorial subsidiary;

(2) The sale or transfer price for the business together with its duty-exemption does not include the capitalization of the duty-exemption *per se;*

(3) The transferee is neither directly or indirectly affiliated with any other territorial duty-exemption holder in any territory;

(4) The transferee will not modify the watch assembly operations of the duty-exemption firm in a manner that will significantly diminish its economic contributions to the territory.

(c) At the request of the Departments, the transferee shall permit representatives of the Departments to inspect whatever records are necessary to establish to their satisfaction that the certifications and representations contained in paragraph (b) of this section have been or are being met.

(d) Any transferee who is either unwilling or unable to make the certifications and representations specified in paragraph (b) of this section shall secure the Departments' approval in advance of the sale or transfer of the business together with its duty-exemption. The request for approval shall specify which of the certifications specified in paragraph (b) of this section the firm is unable or unwilling to make, and give reasons why such fact should not constitute a basis for the Departments' disapproval of the sale or transfer.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985]

§§ 303.10–303.11 [Reserved]

§ 303.12 Issuance and use of production incentive certificates.

(a) *Issuance of certificates.* (1) The total annual amount of the Certificate of Entitlement, Form ITA–360, may be divided and issued on a biannual basis. The first portion of the total annual certificate amount will be based on reported duty-free shipments and creditable wages, determined from the wages as reported on the employer's first two quarterly federal tax returns (941–SS), paid during the first six months of the calendar year, using the formula in §303.14(c). The Departments require the receipt of the data by July 31 for each producer who wishes to receive an interim duty refund certificate. The interim duty refund certificate will be issued on or before August 31 of the same calendar year in which the wages were earned unless the Departments have unresolved questions. The process of determining the total annual amount of the duty refund will be based on verified creditable wages, duty-free shipments into the customs territory of the United States, creditable health insurance, life insurance and pension benefits and the duty differential, if watch tariffs have been reduced during the calendar year. The completed annual application (Form ITA–334P) shall be received by the Departments on or before January 31 and the annual verification of data and the calculation of each producer's total annual duty refund, based on the verified data, will continue to take place in February. Once the calculations for each producer's duty refund has been completed, the portion of the duty refund that has already been issued to each producer will be deducted from the total amount of each producer's annual duty refund amount. The duty refund certificate will continue to be issued by March 1 unless the Departments have unresolved questions.

(2) Certificates shall not be issued to more than one company in the territories owned or controlled by the same corporate entity.

(b) *Securities and handling of certificates.* (1) Certificate holders are responsible for the security of the certificates. The certificates shall be kept at

the territorial address of the insular producer or at another location having the advance approval of the Departments.

(2) All refund requests made pursuant to the certificates shall be entered on the reverse side of the certificate.

(3) Certificates shall be returned by registered, certified or express carrier mail to the Departments when:

(i) A refund is requested which exhausts the entitlement on the face of the certificate,

(ii) The certificate expires, or

(iii) The Departments request their return with good cause.

(4) Certificate entitlements may be transferred according to the procedures described in (c) of this section.

(c) *The use and transfer of certificate entitlements.* (1) Insular producers issued a certificate may request a refund by executing Form ITA–361P (see § 303.2(b)(5) and the instructions on the form). After authentication by the Department of Commerce, Form ITA–361P may be used to obtain duty refunds on articles that entered the customs territory of the United States duty paid except for any article containing a material which is the product of a country to which column 2 rates of duty apply. Articles for which duty refunds are claimed must have entered the customs territory of the United States during the two-year period prior to the issue date of the certificate or during the one-year period the certificate remains valid. Copies of the appropriate Customs entries must be provided with the refund request in order to establish a basis for issuing the claimed amounts. Certification regarding drawback claims and liquidated refunds relating to the presented entries is required from the claimant on the form.

(2) Regulations issued by the Bureau of Customs and Border Protection, U.S. Department of Homeland Security, govern the refund of duties under Public Law 97–446, as amended by Public Law 103–465 and Public Law 108–429. If the Departments receive information from the Bureau of Customs and Border Protection that a producer has made unauthorized use of any official form, they shall cancel the affected certificate.

(3) The insular producer may transfer a portion of all of its certificate entitlement to another party by entering in block C of Form ITA–361P the name and address of the party.

(4) After a Form ITA–361P transferring a certificate entitlement to a party other than the certificate holder has been authenticated by the Department of Commerce, the form may be exchanged for any consideration satisfactory to the two parties. In all cases, authenticated forms shall be transmitted to the certificate holder or its authorized custodian for disposition (see paragraph (b) above).

(5) All disputes concerning the use of an authenticated Form ITA–361P shall be referred to the Departments for resolution. Any party named on an authenticated Form ITA–361P shall be considered an ''interested party'' within the meaning of § 303.13 of this part.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985; 56 FR 9621, Mar. 7, 1991; 61 FR 55885, Oct. 30, 1996; 66 FR 34812, July 2, 2001; 70 FR 67648, Nov. 8, 2005; 72 FR 16714, Apr. 5, 2007]

§ 303.13 Appeals.

(a) Any official decision or action relating to the allocation of duty-exemptions or to the issuance or use of production incentive certificates may be appealed to the Secretaries by any interested party. Such appeals must be received within 30 days of the date on which the decision was made or the action taken in accordance with the procedures set forth in paragraph (b) of this section. Interested parties may petition for the issuance of a rule, or amendment or repeal of a rule issued by the Secretaries. Interested parties may also petition for relief from the application of any rule on the basis of hardship or extraordinary circumstances resulting in the inability of the petitioner to comply with the rule.

(b) Petitions shall bear the name and address of the petitioner and the name and address of the principal attorney or authorized representative (if any) for the party concerned. They shall be addressed to the Secretaries and filed in one original and two copies with the

U.S. Department of Commerce, Enforcement and Compliance, International Trade Administration, Washington, D.C. 20230, Attention: Statutory Import Programs Staff. Petitions shall contain the following:

(1) A reference to the decision, action or rule which is the subject of the petition;

(2) A short statement of the interest of the petitioner;

(3) A statement of the facts as seen by the petitioner;

(4) The petitioner's argument as to the points of law, policy of fact. In cases where policy error is contended, the alleged error together with the policy the submitting party advocates as the correct one should be described in full;

(5) A conclusion specifying the action that the petitioner believes the Secretaries should take.

(c) The Secretaries may at their discretion schedule a hearing and invite the participation of other interested parties.

(d) The Secretaries shall communicate their decision which shall be final, to the petitioner by registered mail.

(e) If the outcome of any petition materially affects the amount of the petitioner's allocation and if the Secretaries' consideration of the petition continues during the calculation of the annual allocations, the Secretaries shall set aside a portion of the affected territorial share in an amount which, in their judgment, protects the petitioner's interest and shall allocate the remainder among the other producers.

[49 FR 17740, Apr. 25, 1984, as amended at 56 FR 9622, Mar. 7, 1991; 72 FR 16714, Apr. 5, 2007; 78 FR 72571, Dec. 3, 2013]

§ 303.14 Allocation factors, duty refund calculations and miscellaneous provisions.

(a) *The allocation formula.* (1) Except as provided in (a)(2) of this section, the territorial shares (excluding any amount set aside for possible new entrants) shall be allocated among the several producers in each territory in accordance with the following formula:

(i) Fifty percent of the territorial share shall be allocated on the basis of the net dollar amount of economic contributions to the territory consisting of the dollar amount of creditable wages, up to an amount equal to 65% of the contribution and benefit base for Social Security as defined in the Social Security Act for the year in which the wages were earned, paid by each producer to territorial residents, plus the dollar amount of income taxes (excluding penalty and interest payments and deducting any income tax refunds and subsidies paid by the territorial government), and

(ii) Fifty percent of the territorial share shall be allocated on the basis of the number of units of watches and watch movements assembled in the territory and entered by each producer duty-free into the customs territory of the United States.

(2) If there is only one producer in a territory, the entire territorial share, excluding any amount set aside for possible new entrants, may be allocated without recourse to any distributive formula.

(b) *Minimum assembly requirements and prohibition of preferential supply relationship.* (1) No insular watch movement or watch may be entered free of duty into the customs territory of the United States unless the producer used 30 or more discrete parts and components to assemble a mechanical watch movement and 33 or more discrete parts and components to assemble a mechanical watch.

(2) Quartz analog watch movements must be assembled from parts knocked down to the maximum degree possible for the technical capabilities of the insular industry as a whole. The greatest degree of disassembly specified, for each manufacturer's brand and model, by any producer in any territory purchasing such brands and models shall constitute the disassembly required as a minimum for the industry as a whole.

(3) Watch movements and watches assembled from components with a value of more than $300 for watch movements and $3000 for watches shall not be eligible for duty-exemption upon entry into the U.S. Customs territory. Value means the value of the merchandise plus all charges and costs incurred up to the last point of shipment (i.e., prior to entry of the parts and components into the territory).

(4) No producer shall accept from any watch parts and components supplier advantages and preferences which might result in a more favorable competitive position for itself vis-a-vis other territorial producers relying on the same supplier. Disputes under this paragraph may be resolved under the appeals procedures contained in § 303.13(b).

(c) *Calculation of the value of the mid-year production incentive certificates.* (1) The value of each producer's certificate shall equal the producer's average creditable wage per unit shipped during the first six months of the calendar year multiplied by the sum of:

(i) The number of units shipped up to 300,000 units times a factor of 90%; plus

(ii) Incremental units shipped up to 450,000 units times a factor of 85%; plus

(iii) Incremental units shipped up to 600,000 units times a factor of 80%; plus

(iv) Incremental units shipped up to 750,000 units times a factor of 75%.

(2) *Calculation of the value of the annual production incentive certificates.* The value of each producer's certificate shall equal the producer's average creditable benefit per unit based on creditable wages, health insurance, life insurance and pension benefits plus any duty differential, if applicable, averaged from the amount of duty free units shipped during the calendar year multiplied by the sum of the following to obtain the total verified amount of the annual duty-refund per company. This amount would then be adjusted by deducting the amount of the mid-year duty-refund already issued.

(i) The number of units shipped up to 300,000 units times a factor of 90%; plus

(ii) Incremental units shipped up to 450,000 units times a factor of 85%; plus

(iii) Incremental units shipped up to 600,000 units times a factor of 80%; plus

(iv) Incremental units shipped up to 750,000 units times a factor of 75%.

(3) The Departments may make adjustments for these data in the manner set forth in § 303.5(c).

(d) *New entrant invitations.* Applications from new firms are invited for any unused portion of any territorial share.

(e) *Territorial shares.* The shares of the total duty exemption are 1,866,000 for the Virgin Islands, 500,000 for Guam, 500,000 for American Samoa, and 500,000 for the Northern Mariana Islands.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985; 53 FR 17825, May 19, 1988; 53 FR 52679, Dec. 29, 1988; 53 FR 52994, Dec. 30, 1988; 56 FR 9622, Mar. 7, 1991; 58 FR 21348, Apr. 21, 1993; 59 FR 8847, 8848, Feb. 24, 1994; 61 FR 55885, Oct. 30, 1996; 63 FR 49667, Sept. 17, 1998; 65 FR 8049, Feb. 17, 2000; 69 FR 51533, Aug. 20, 2004; 72 FR 16714, Apr. 5, 2007]

Subpart B—Jewelry

SOURCE: 64 FR 67150, Dec. 1, 1999, unless otherwise noted.

§ 303.15 Purpose.

(a) This subpart implements the responsibilities of the Secretaries of Commerce and the Interior (''the Secretaries'') under Pub. L. 106–36, enacted 25 June 1999 which substantially amended Pub. L. 97–446, enacted 12 January 1983, amended by Pub. L. 89–805, enacted 10 November 1966, amended by Pub. L. 94–88, enacted 8 August 1975, amended by Pub. L. 94–241, enacted 24 March 1976, and amended by Pub. L. 103–465, enacted 8 December 1994, and Public Law 108–429, enacted on 3 December 2004.

(b) The amended law provides for the issuance of certificates to insular jewelry producers who have met the requirements of the laws and regulations, entitling the holder (or any transferee) to obtain refunds of duties on any article imported into the customs territory of the United States duty paid except for any article containing a material which is the product of a country to which column 2 rates of duty apply. The amounts of these certificates may not exceed specified percentages of the producers' verified creditable wages in the insular possessions (90% of wages paid for the production of the first 300,000 duty-free units and declining percentages, established by the Secretaries, of wages paid for incremental production up to 10,000,000 units by each producer) nor an aggregate annual amount for all certificates exceeding $5,000,000 adjusted for growth by the ratio of the previous year's gross national product to the gross national product in 1982. However, the law specifies that watch producer benefits are not to be diminished as a consequence

of extending the duty refund to jewelry manufacturers. In the event that the amount of the calculated duty refunds for watches and jewelry exceeds the total aggregate annual amount that is available, the watch producers shall receive their calculated amounts and the jewelry producers would receive amounts proportionately reduced from the remainder. Refund requests are governed by regulations issued by the Department of Homeland Security (see 19 CFR 7.4).

(c) Section 2401(a) of Pub. L. 106–36 and additional U.S. note 5 to chapter 91 of the HTSUS authorize the Secretaries to issue regulations necessary to carry out their duties. The Secretaries may cancel or restrict the certificate of any insular manufacturer found violating the regulations.

[49 FR 17740, Apr. 25, 1984, as amended at 70 FR 67648, Nov. 8, 2005; 72 FR 16715, Apr. 5, 2007; 73 FR 34857, June 19, 2008]

§ 303.16 Definitions and forms.

(a) *Definitions.* For purposes of the subpart, unless the context indicates otherwise:

(1) *Act* means Pub. L. 97–446, enacted 12 January 1983 (19 U.S.C. 1202), 96 Stat. 2329, as amended by Pub. L. 103–465, enacted on 8 December 1994, 108 Stat. 4991 and, as amended by Pub. L. 106–36, enacted on 25 June 1999, and Public Law 108–429, enacted on 3 December 2004.

(2) *Secretaries* means the Secretary of Commerce and the Secretary of the Interior or their delegates, acting jointly.

(3) *Director* means the Director of the Statutory Import Programs Staff, International Trade Administration, U.S. Department of Commerce.

(4) *Sale or transfer of a business* means the sale or transfer of control, whether temporary or permanent, over a firm which is eligible for a jewelry program duty-refund to any other firm, corporation, partnership, person or other legal entity by any means whatsoever, including, but not limited to, merger and transfer of stock, assets or voting trusts.

(5) *New firm* means a jewelry company which has requested in writing to the Secretaries permission to participate in the program. In addition to any other information required by the Secretaries, new firm requests shall include a representation that the company agrees to abide by the laws and regulations of the program, an outline of the company's anticipated economic contribution to the territory (including the number of employees) and a statement as to whether the company is affiliated by ownership or control with any other watch or jewelry company in the insular possessions. The Secretaries will then review the request and make a decision based on the information provided and the economic contribution to the territory. A new jewelry firm may not be affiliated through ownership or control with any other jewelry duty-refund recipient. In assessing whether persons or parties are affiliated, the Secretaries will consider the following factors, among others: stock ownership; corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The Secretaries may not find that control exists on the basis of these factors unless the relationship has the potential to affect decisions concerning production, pricing, or cost. Also, no jewelry duty-refund recipient may own or control more than one watch duty-refund recipient.

(6) *Jewelry producer* means a company, located in one of the insular territories (see paragraph (a)(8) of this section), that produces jewelry provided for in heading 7113, HTSUS, which meets all the Bureau of Customs and Border Protection requirements for duty-free entry set forth in General Note 3(a)(iv), HTSUS, and 19 CFR 7.3, and has maintained its eligibility for duty refund benefits by complying with these regulations.

(7) *Unit of Jewelry* means a single article (*e.g.*, ring, bracelet, necklace), pair (e.g, cufflinks), gram for links which are sold in grams and stocked in grams, and other subassemblies and components in the customary unit of measure they are stocked and sold within the industry.

(8) *Territories, territorial and insular possessions* refers to the insular possessions of the United States (i.e., the U.S. Virgin Islands, Guam, American Samoa and the Northern Mariana Islands).

(9) Creditable wages and associated creditable fringe benefits and creditable duty differentials eligible for the duty refund benefit include, but are not limited to, the following:

(i) Wages up to an amount equal to 65 percent of the contribution and benefit base for Social Security, as defined in the Social Security Act for the year in which wages were earned, paid to permanent residents of the insular possessions employed in a firm's manufacture of HTSUS heading 7113 articles of jewelry which are a product of the insular possessions and have met the Bureau of Customs and Border Protection's criteria for duty-free entry into the United States, plus any wages paid for the repair of non-insular HTSUS heading 7113 jewelry up to an amount equal to 50 percent of the firm's total creditable wages.

(A) Wages paid to persons engaged in the day-to-day assembly operations at the company office, wages paid to administrative employees working on the premises of the company office, wages paid to security operations employees and wages paid to servicing and maintenance employees if these services are integral to the assembly and manufacturing operations and the employees are working on the premises of the company office.

(B) Wages paid to permanent residents who are employees of a new company involved in the jewelry assembly and jewelry manufacturing of HTSUS heading 7113 jewelry for up to 18 months after such jewelry company commences jewelry manufacturing or jewelry assembly operations in the insular possessions.

(C) Wages paid when a maximum of two program producers work on a single piece of HTSUS heading 7113 jewelry which entered the United States free of duty under the program. Wages paid by the two producers will be credited proportionally provided both producers demonstrate to the satisfaction of the Secretaries that they worked on the same piece of jewelry, the jewelry received duty-free treatment into the customs territory of the United States, and the producers maintained production and payroll records sufficient for the Departments' verification of the creditable wage portion (see § 303.17(b)).

(D) Wages paid to persons engaged in both creditable and non-creditable assembly and repair operations may be credited proportionally provided the firm maintains production, shipping and payroll records adequate for the Departments' verification of the creditable portion.

(E) Wages paid to new permanent residents who have met the requirements of permanent residency in accordance with the Departments' regulations along with meeting all other creditable wage requirements of the regulations, which must be documented and verified to the satisfaction of the Secretaries.

(ii) The combined creditable amount of individual health and life insurance per year, for each full-time permanent resident employee who works on the premises of the company office and whose wages qualify as creditable, may not exceed 130 percent of the ''weighted average'' yearly federal employee health insurance, which is calculated from the individual health plans weighted by the number of individual contracts in each plan. The yearly amount is calculated by the Office of Personnel Management and includes the ''weighted average'' of all individual health insurance costs for federal employees throughout the United States. The maximum life insurance allowed within this combined amount is $50,000 for each employee. Only during the time employees are earning creditable wages are they entitled to health and life insurance duty refund benefits under the program.

(A) The combined creditable amount of family health and life insurance per year, for each full-time permanent resident employee who works on the premises of the company office and whose wages qualify as creditable, may not exceed 150 percent of the ''weighted average'' yearly federal employee health insurance, which is calculated from the family health plans weighted by the number of family contracts in each plan. The yearly amount is calculated by the Office of Personnel Management and includes the ''weighted average'' of all family health insurance costs for federal employees throughout the United States. The maximum life

insurance allowed within this combined amount is $50,000 dollars for each employee. Only during the time employees are earning creditable wages are they entitled to health and life insurance duty refund benefits under the program.

(B) The creditable pension benefit, for each full-time permanent resident employee who works on the premises of the company office and whose wages qualify as creditable, is up to 3 percent of the employee's wages unless the employee's wages exceed the maximum annual creditable wage allowed under the program (see paragraph (a)(9)(i) of this section). An employee earning more than the maximum creditable wage allowed under the program will be eligible for only 3 percent of the maximum creditable wage. Only during the time employees are earning creditable wages are they entitled to pension duty refund benefits under the program.

(10) Non-creditable wages and associated non-creditable fringe benefits ineligible for the duty refund benefit include, but are not limited to, the following:

(i) Wages over 65 percent of the contribution and benefit base for Social Security, as defined in the Social Security Act for the year in which wages were earned, paid to permanent residents of the territories employed in a firm's 91/5 heading 7113, HTSUS, jewelry program.

(A) Wages paid for the repair of jewelry in an amount over 50 percent of the firm's total creditable wages.

(B) Wages paid to employees who are involved in assembling HTSUS heading 7113 jewelry beyond 18 months after such jewelry company commences jewelry manufacturing or jewelry assembly operations in the insular possessions if the jewelry does not meet the Bureau of Customs and Border Protection's substantial transformation requirements and other criteria for duty-free enter into the United States.

(C) Wages paid for the assembly and manufacturing of jewelry which is shipped to places outside the customs territory of the United States; wages paid for the assembly and manufacturing of jewelry that does not meet the regulatory assembly requirements; or wages paid for the assembly and manufacture of jewelry that contain HTSUS column 2 components.

(D) Wages paid to those persons not engaged in the day-to-day assembly operations on the premises of the company office, wages paid to any outside consultants, wages paid to outside the office personnel, including but not limited to, lawyers, gardeners, construction workers and accountants; wages paid to employees not working on the premises of the company office; wages paid to employees working with a non-program producer to create a single piece of HTSUS heading 7113 jewelry whether or not it entered the United States free of duty; and wages paid to employees who do not qualify as permanent residents in accordance with the Departments' regulations.

(E) Wages paid to persons engaged in both creditable and non-creditable assembly and repair operations if the producer does not maintain production, shipping and payroll records adequate for the Departments' verification of the creditable portion.

(ii) Any costs, for the year in which the wages were paid, of the combined creditable amount of individual health and life insurance for employees over 130 percent of the ''weighted average'' yearly individual health insurance costs for all federal employees. The cost of any life insurance over the $50,000 limit for each employee. Any health and life insurance costs during the time an employee is not earning creditable wages.

(A) Any costs, for the year in which the wages were paid, of the combined creditable amount of family health and life insurance for employees over 150 percent of the ''weighted average'' yearly family health insurance costs for all federal employee. The cost of any life insurance over the $50,000 limit for each employee. Any health and life insurance costs during the time an employee is not earning creditable wages.

(B) Any pension benefits that were not based on associated creditable wages. The cost of any pension benefit per employee over 3 percent of the employee's creditable wages unless the employee's wages exceed the maximum annual creditable annual maximum

creditable wage allowed under the program (see paragraph (a)(9)(i) of this section). Employees earning over the maximum creditable wage allowed under the program would have a creditable annual pension benefit of up to 3 percent of the maximum creditable wage and wages over 3 percent of the maximum creditable wage would not be creditable.

(11) *Dutiable jewelry* includes jewelry which does not meet the requirements for duty-free entry under General Note 3(a)(iv), HTSUS, and 19 CFR 7.3, contains any material which is the product of any country with respect to which Column 2 rates of duty apply or is ineligible for duty-free treatment pursuant to other laws or regulations.

(12) *Permanent resident* means a person with one residence which is in the insular possessions or a person with one or more residences outside the insular possessions who meets criteria that include maintaining his or her domicile in the insular possessions, residing (*i.e.*, be physically present for at least 183 days within a continuous 365 day period year) and working in the territory at a program company, and maintaining his or her primary office for day-to-day work in the insular possessions.

(b) *Forms.* (1) *ITA—334P* ''Annual Application for License to Enter Watches and Watch Movements into the Customs Territory of the United States.'' The Director shall issue instructions for jewelry manufacturers on the completion of the relevant portions of the form. The form must be completed annually by all jewelry producers desiring to receive a duty refund and, with special instructions for its completion, by producers who wish to receive the total annual amount of the duty refund in installments on a biannual basis.

(2) *ITA–360P ''Certificate of Entitlement to Secure the Refund of Duties on Articles that Entered the Customs Territory of The United State Duty Paid.''* This document authorizes an insular jewelry producer to request the refund of duties on imports of articles that entered the customs territory of the United States duty paid, with certain exceptions, up to the specified value of the certificate. Certificates may be used to obtain duty refunds only when presented with a properly executed Form ITA–361P.

(3) *ITA–361P ''Request for Refund of Duties on Articles that Entered the Customs Territory of the United States Duty Paid.''* This form must be completed to obtain the refund of duties authorized by the Director through Form ITA–360P. After authentication by the Department of Commerce, it may be used for the refund of duties on items which were entered into the customs territory of the United States duty paid during a specified time period. Copies of the appropriate Customs entries must be provided with this form to establish a basis for issuing the claimed amounts. The forms may also be used to transfer all or part of the producer's entitlement to another party (see Sec. 303.19(c)).

[64 FR 67150, Dec. 1, 1999, as amended at 65 FR 8049, Feb. 17, 2000; 66 FR 34812, July 2, 2001; 67 FR 77409, Dec. 18, 2202; 70 FR 67648, Nov. 8, 2005; 72 FR 16715, Apr. 5, 2007; 73 FR 62881, Oct. 22, 2008]

§ 303.17 Application for annual duty-refunds.

(a) Form ITA–334P shall be furnished to producers by January 1 and must be completed and returned to the Director no later than January 31 of each calendar year.

(b) All data supplied are subject to verification by the Secretaries and no duty refund shall be made to producers until the Secretaries are satisfied that the data are accurate. To verify the data, representatives of the Secretaries shall have access to relevant company records including, but not limited to:

(1) Work sheets used to answer all questions on the application form, as specified by the instructions;

(2) Original records from which such data are derived;

(3) Records pertaining to ownership and control of the company;

(4) Records pertaining to all duty-free and dutiable shipments of HTSUS 7113 jewelry, including Customs entry documents, or the certificate of origin for the shipment, or, if a company did

not receive such documents from Customs, a certification from the consignee that the jewelry shipment received duty-free treatment, or a certification from the producer, if the producer can attest that the jewelry shipment received duty-free treatment;

(5) Records pertaining to corporate income taxes, gross receipts taxes and excise taxes paid by each producer in the territories;

(6) Customs, bank, payroll, including time cards, production records, and all shipping records including the importer of record number and proof of residency, as requested;

(7) All records pertaining to health insurance, life insurance and pension benefits for each employee;

(8) Records on purchases of components and sales of jewelry, including proof of payment; and

(9) Any other records in the possession of the parent or affiliated companies outside the territory pertaining to any aspect of the producer's jewelry operations.

(c) Data verification shall be performed in the territories, unless other arrangements satisfactory to the Departments are made in advance, by the Secretaries' representatives by the end of February of each calendar year. In the event a company cannot substantiate the data in its application, the Secretaries shall determine which data will be used.

(d) Records subject to the requirements of paragraph (b) of this section, shall be retained for a period of two years following their creation.

[49 FR 17740, Apr. 25, 1984, as amended at 66 FR 34813, July 2, 2001; 70 FR 67650, Nov. 8, 2005; 72 FR 16715, Apr. 5, 2007]

§ 303.18 Sale or transfer of business.

(a) The sale or transfer of a business together with its duty refund entitlement shall be permitted with prior written notification to the Departments. Such notification shall be accompanied by certifications and representations, as appropriate, that:

(1) The transferee is neither directly nor indirectly affiliated with any other territorial duty refund jewelry recipient in any territory;

(2) The transferee will not modify the jewelry operations in a manner that will significantly diminish its economic contributions to the territory.

(b) At the request of the Departments, the transferee shall permit representatives of the Departments to inspect whatever records are necessary to establish to their satisfaction that the certifications and representations contained in paragraph (a) of this section have been or are being met.

(c) Any transferee who is either unwilling or unable to make the certifications and representations specified in paragraph (a) of this section shall secure the Departments' approval in advance of the sale or transfer of the business. The request for approval shall specify which of the certifications specified in paragraph (a) of this section the firm is unable or unwilling to make, and give reasons why such fact should not constitute a basis for the Departments' disapproval of the sale or transfer.

§ 303.19 Issuance and use of production incentive certificates.

(a) *Issuance of certificates.* (1) The total annual amount of the Certificate of Entitlement, Form ITA–360, may be divided and issued on a biannual basis. The first portion of the total annual certificate amount will be based on reported duty-free shipments and creditable wages, determined from the wages as reported on the employer's first two quarterly federal tax returns (941–SS), paid during the first six month of the calendar year, using the formula in § 303.20(b). The Departments require the receipt of the data by July 31 for each producer who wishes to receive an interim duty refund certificate. The interim duty refund certificate will be issued on or before August 31 of the same year in which the wages were earned unless the Departments have unresolved questions. The process of determining the total annual amount of the duty refund will be based on verified creditable wages, duty-free shipments into the customs territory of the United States, creditable health insurance, life insurance and pension benefits and the duty differential, if watch tariffs have been reduced during the calendar year. The completed annual application (Form

ITA–334P) shall be received by the Departments on or before January 31 and the annual verification of data and calculation of each producer's total annual duty refund, based on the verified data, will continue to take place in February. Once the calculations for each producer's duty refund has been completed, the portion of the duty refund that has already been issued to each producer will be deducted from the total amount of each producer's annual duty refund amount. The duty refund certificate will continue to be issued by March 1 unless the Departments have unresolved questions.

(2) Certificates shall not be issued to more than one jewelry company in the territories owned or controlled by the same corporate entity.

(b) *Security and handling of certificates.* (1) Certificate holders are responsible for the security of the certificates. The certificates shall be kept at the territorial address of the producer or at another location having the advance approval of the Departments.

(2) All refund requests made pursuant to the certificates shall be entered on the reverse side of the certificate.

(3) Certificates shall be returned by registered, certified or express carrier mail to the Department of Commerce when:

(i) A refund is requested which exhausts the entitlement on the face of the certificate,

(ii) The certificate expires, or

(iii) The Departments request their return with good cause.

(4) Certificate entitlements may be transferred according to the procedures described in paragraph (c) of this section.

(c) *The use and transfer of certificate entitlements.* (1) Insular producers issued a certificate may request a refund by executing Form ITA–361P (see § 303.16(b)(3)) and the instruction on the form). After authentication by the Department of Commerce, Form ITA–361P may be used to obtain duty refunds on article that entered the customs territory of the United States duty paid. Duties on an article which is the product of a country with respect to column 2 rates of duty apply may not be refunded Articles for which duty refunds are claimed must have entered the customs territory of the United States during the two-year period prior to the issue date of the certificate or during the one-year period the certificate remains valid. Copies of the appropriate Customs entries must be provided with the refund request in order to establish a basis for issuing the claimed amounts. Certification regarding drawback claims and liquidated refunds relating to the presented entries is required from the claimant on the form.

(2) Regulations issued by the Bureau of Customs and Border Protection, U.S. Department of Homeland Security, govern the refund of duties under 19 CFR 7.4. If the Departments receive information from the Bureau of Customs and Border Protection that a producer has made unauthorized use of any official form, they may cancel the affected certificate.

(3) The territorial producer may transfer a portion of all of its certificate entitlement to another party by entering in block C of Form ITA–361P the name and address of the party.

(4) After a Form ITA–361P transferring a certificate entitlement to a party other than the certificate holder has been authenticated by the Department of Commerce, the form may be exchanged for any consideration satisfactory to the two parties. In all cases, authenticated forms shall be transmitted to the certificate holder or its authorized custodian for disposition (see paragraph (b) of this section).

(5) All disputes concerning the use of an authenticated Form ITA–361P shall be referred to the Departments for resolution. Any party named on an authenticated Form ITA–361P shall be considered an ''interested party'' within the meaning of § 303.21 of this part.

[49 FR 17740, Apr. 25, 1984, as amended at 66 FR 34813, July 2, 2001; 70 FR 67650, Nov. 8, 2005; 72 FR 16715, Apr. 5, 2007]

§ 303.20 Duty refund calculations and miscellaneous provisions.

(a) Territorial jewelry producers are entitled to duty refund certificates only for jewelry that they produce which is provided for in heading 7113, HTSUS, is a product of a territory and otherwise meets the requirements for

duty-free entry under General Note 3 (a)(iv), HTSUS, and 19 CFR 7.3.

(1) An article of jewelry is considered to be a product of a territory if:

(i) The article is wholly the growth or product of the territory; or

(ii) The article became a new and different article of commerce as a result of production or manufacture performed in the territories.

(2) Eighteen month exemption. Any article of jewelry provided for in HTSUS heading 7113, assembled in the insular possessions by a new entrant jewelry manufacturer shall be treated as a product of the insular possessions if such article is entered into the customs territory of the United States no later than 18 months after such producer commences jewelry manufacturing or jewelry assembly operations in the insular possessions.

(b) *Calculation of the value of the mid-year production incentive certificates.*(1) The value of each producer's certificate shall equal the producer's average creditable wage per unit shipped during the first six months of the calendar year multiplied by the sum of:

(i) The number of units shipped up to 300,000 units times a factor of 90%; plus

(ii) Incremental units shipped up to 3,533,334 units times a factor of 85%; plus

(iii) Incremental units shipped up to 6,766,667 units times a factor of 80%; plus

(iv) Incremental units shipped up to 10,000,000 units times a factor of 75%.

(2) *Calculation of the value of the annual production incentive certificates.* The value of each producer's certificate shall equal the producer's average creditable benefit per unit based on creditable wages, health insurance, life insurance and pension benefits averaged from the amount of duty free units shipped during the calendar year multiplied by the sum of the following to obtain the total verified amount of the annual duty-refund per company. This amount would then be adjusted by deducting the amount of the mid-year duty-refund already issued.

(i) The number of units shipped up to 300,000 units times a factor of 90%; plus

(ii) Incremental units shipped up to 3,533,334 units times a factor of 85%; plus

(iii) Incremental units shipped up to 6,766,667 units times a factor of 80%; plus

(iv) Incremental units shipped up to 10,000,000 units times a factor of 75%.

[64 FR 67150, Dec. 1, 1999, as amended at 70 FR 67650, Nov. 8, 2005; 72 FR 16715, Apr. 5, 2007; 73 FR 34857, June 19, 2008]

§ 303.21 Appeals.

(a) Any official decision or action relating to the issuance or use of production incentive certificates may be appealed to the Secretaries by any interested party. Such appeals must be received within 30 days of the date on which the decision was made or the action taken in accordance with the procedures set forth in paragraph (b) of this section. Interested parties may petition for the issuance of a rule, or amendment or repeal of a rule issued by the Secretaries. Interested parties may also petition for relief from the application of any rule on the basis of hardship or extraordinary circumstances resulting in the inability of the petitioner to comply with the rule.

(b) Petitions shall bear the name and address of the petitioner and the name and address of the principal attorney or authorized representative (if any) for the party concerned. They shall be addressed to the Secretaries and filed in one original and two copies with the U.S. Department of Commerce, Enforcement and Compliance, International Trade Administration, Washington, DC 20230, Attention: Statutory Import Programs Staff. Petitions shall contain the following:

(1) A reference to the decision, action or rule which is the subject of the petition;

(2) A short statement of the interest of the petitioner;

(3) A statement of the facts as seen by the petitioner;

(4) The petitioner's argument as to the points of law, policy or fact. In cases where policy error is contended, the alleged error together with the policy the submitting party advocates as the correct one should be described in full;

(5) A conclusion specifying the action that the petitioner believes the Secretaries should take.

(c) The Secretaries may at their discretion schedule a hearing and invite the participation of other interested parties.

(d) The Secretaries shall communicate their decision, which shall be final, to the petitioner by registered, certified or express mail.

[64 FR 67150, Dec. 1, 1999, as amended at 72 FR 16716; 78 FR 72571, Dec. 3, 2013]

PART 310—OFFICIAL U.S. GOVERNMENT RECOGNITION OF AND PARTICIPATION IN INTERNATIONAL EXPOSITIONS HELD IN THE UNITED STATES

Sec.

AUTHORITY: Pub. L. 91–269, 84 Stat. 271 (22 U.S.C. 2801 *et seq.).*

SOURCE: 40 FR 34107, Aug. 14, 1975, unless otherwise noted. Redesignated at 46 FR 57457, Nov. 24, 1981.

§ 310.1 Background and purpose.

The regulations in this part are issued under the authority of Pub. L. 91–269 (84 Stat. 271, 22 U.S.C. 2801 *et seq.*) which establishes an orderly procedure for Federal Government recognition of, and participation in, international expositions to be held in the United States. The Act provides, inter alia, that Federal recognition of an exposition is to be granted upon a finding by the President that such recognition will be in the national interest. In making this finding, the President is directed to consider, among other factors, a report from the Secretary of Commerce as to the purposes and reasons for an exposition and the extent of financial and other support to be provided by the State and local officials and business and community leaders where the exposition is to be held, and a report by the Secretary of State to determine whether the exposition is qualified for registration under Bureau of International Expositions (BIE) rules. The BIE is an international organization established by the Paris Convention of 1928 (T.I.A.S. 6548 as amended by T.I.A.S. 6549) to regulate the conduct and scheduling of international expositions in which foreign nations are officially invited to participate. The BIE divides international expositions into different categories and types and requires each member nation to observe specified minimum time intervals in scheduling each of these categories and types of expositions.[1] Under BIE rules, member nations may not ordinarily participate in an international exposition unless such exposition has been approved by the BIE. The United States became a member of the BIE on April 30, 1968, upon ratification of the Paris Convention by the U.S. Senate (114 Cong. Rec. 11012).

[1] The BIE defines a General Exposition of the First Category as an exposition dealing with progress achieved in a particular field applying to several branches of human activity at which the invited countries are obligated to construct national pavilions. A General Exposition of the Secondary Category is a similar exposition at which invited countries are not authorized to construct national pavilions, but occupy space provided by the exposition sponsors. Special Category Expositions are those dealing only with one particular technique, raw material, or basic need.

The BIE frequency rules require that an interval of 15 years must elapse between General Expositions of the First Category held in one country. General Expositions of the Second Category require an interval of 10 years. An interval of 5 years must ordinarily elapse between Special Category Expositions of the same kind in one country or three months between Special Category Expositions of different kinds. These frequency intervals are computed from the date of the opening of the exposition.

More detailed BIE classification criteria and regulations are contained in the Paris Convention of 1928, as amended in 1948 and 1966. Applicants not having a copy of the text of this convention may obtain one by writing the Director. (The Convention may soon be amended by a Protocol which has been approved by the BIE and ratified by the United States. This amendment would increase authorized frequencies or intervals for BIE approved expositions.)

Federal participation in a recognized international exposition requires a specific authorization by the Congress, upon a finding by the President that such participation would be in the national interest. The Act provides for the transmission to Congress of a participation proposal by the President. This proposal transmits to the Congress information regarding the exposition, including a statement that it has been registered by the BIE and a plan for Federal participation prepared by the Secretary of Commerce in cooperation with other interested Federal departments and agencies.

§ 310.2 Definitions.

For the purpose of this part, except where the context requires otherwise:

(a) *Act* means Pub. L. 91–269.

(b) *Secretary* means the Secretary of Commerce.

(c) *Commissioner General* means the person appointed to act as the senior Federal official for the exposition as required by BIE rules and regulations.

(d) *Director* means the Director of the International Expositions Staff, Office of the Deputy Assistant Secretary for Export Development, International Trade Administration, Department of Commerce.

(e) *Applicant* means a State, County, municipality, a political subdivision of the foregoing, private non-profit or not-for-profit organizations, or individuals filing an application with the Director seeking Federal recognition of an international exposition to be held in the United States.

(f) *State* means one of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(g) *Exposition* means an international exposition proposed to be held in the United States for which an application has been filed with the Director seeking Federal recognition under the Act; which proposes to invite more than one foreign country to participate; and, which would exceed three weeks in duration. Any event under three weeks in duration is not considered an international exposition under BIE rules.

[40 FR 34107, Aug. 14, 1975. Redesignated and amended at 46 FR 57457, Nov. 24, 1981]

§ 310.3 Applications for Federal recognition.

(a) Applications for Federal recognition of an exposition shall be filed with, and all official communications in connection therewith addressed to, the International Expositions Staff, International Trade Administration, Department of Commerce, Washington, DC 20230.

(b) Every application, exhibit, or enclosure, except where specifically waived by the Director, shall be in quadruplicate, duly authenticated and referenced.

(c) Every application shall be in letter form and shall contain the date, address, and official designation of the applicant and shall be signed by an authorized officer or individual.

(d) Every application, except where specifically waived by the Director, shall be accompanied by the following exhibits:

1. *Exhibit No. 1.* A study setting forth in detail the purpose for the exposition, including any historical, geographic, or other significant event of the host city, State, or region related to the exposition.

2. *Exhibit No. 2.* An exposition plan setting forth in detail (i) the theme of the exposition and the ''storyline'' around which the entire exposition is to be developed; (ii) whatever preliminary architectural and design plans are available on the physical layout of the site plus existing and projected structures; (iii) the type of participation proposed in the exposition (e.g., foreign and domestic exhibits); (iv) cultural, sports, and special events planned; (v) the proposed BIE category of the event and evidence of its conformity to the regulations of the BIE (a copy of these regulations can be obtained from the Director upon request); (vi) the proposed steps that will be taken to protect foreign exhibitors under the BIE model rules and regulations and (vii) in writing commit its organization to the completion of the exposition.

3. *Exhibit No. 3.* Documentary evidence of State, regional and local support (e.g., letters to the applicant from business and civic leadership of the region, pledging assistance and/or financing; State and/or municipal resolutions, acts, or appropriations; referendums on bond issues, and others).

4. *Exhibit No. 4.* An organization chart of the exposition management structure (actual or proposed) of the applicant, including description of the functions, duties and responsibilities of each official position along with bibliographic material, including any professional experience in the fields of architecture, industrial design, engineering, labor relations, concession management, interpretative theme planning, exhibit development, etc., on principal officers, if available. (The principal officials should also be prepared to submit subsequent individual statements under oath of their respective financial holdings and other interests.)

5. *Exhibit No. 5.* A statement setting forth in detail (i) the availability of visitor services in existence or projected to accommodate tourists at the exposition (e.g., number of hotel and motel units, number and type of restaurants, health facilities, etc.); (ii) evidence of adequate transportation facilities and accessibility of the host city to large groups of national and international visitors (e.g., number and schedule of airlines, bus lines, railroads, and truck lines serving the host city); and (iii) plans to promote the exposition as a major national and international tourist destination.

6. *Exhibit No. 6.* A statement setting forth in detail the applicant's plans for acquiring title to, or the right to occupy and use real property, other than that owned by the applicant or by the United States, essential for implementing the project or projects covered by the application. If the applicant, at the time of filing the application, has acquired title to the real property, he should submit a certified copy of the deed(s). If the applicant, at the time of filing the application, has by easement, lease, franchise, or otherwise acquired the right to occupy and use real property owned by others, he should submit a certified copy of the appropriate legal instrument(s) evidencing this right.

7. *Exhibit No. 7.* A statement of the latest prevailing hourly wage rates for construction workers in the host city (e.g., carpenters, cement masons, sheet metal workers, etc.).

8. *Exhibit No. 8.* Information on attitudes of labor leaders as to ''no strike'' agreements during the development and operation of the exposition. Actual ''no strike'' pledges are desirable.

9. *Exhibit No. 9.* A detailed study conducted and certified by a nationally recognized firm(s) in the field of economics, accounting, management, etc., setting forth (i) proposed capital investment cost; cash flow projections; and sources of financing available to meet these costs, including but not limited to funds from State and municipal financing, general obligation and/or general revenue bond issues, and other public or private sources of front-end capital; (ii) assurances that the ''guaranteed financing'' is or will be available in accordance with Section 2(a)(1)(b) of Pub. L. 91–269; (iii) the projected expenses for managing the exposition; (iv) projected operational revenues broken down to include admissions, space rental, concessions, service fees and miscellaneous income; and (v) cost-benefit projections. These should be accompanied by a statement of the firm that the needed cash flow, sources of funding, and revenue projections are realistic and attainable.

10. *Exhibit No. 10.* A description of the exposition implementation time schedule and the management control system to be utilized to implement the time schedule (e.g., PERT, CPM, etc.).

11. *Exhibit No. 11.* A statement setting forth in detail the public relations, publicity and other promotional plans of the applicant. For example, the statement could include: (i) an outline of the public relations/publicity program broken down by percentage allocations among the various media; (ii) a public relations/publicity program budget with the various calendar target dates for completion of phases prior to the opening, the opening and post-opening of the exposition; and (iii) protocol plans for U.S. and foreign dignitaries, as well as for special ceremonies and events and how these plans are to be financed.

12. *Exhibit No. 12.* A study setting forth in detail the benefits to be derived from the exposition and residual use plans. For example, the study might include: (i) extent of immediate economic benefits for the city/region/nation in proportion to total investment in the exposition; (ii) extent of long range economic benefits for the city/region/nation in proportion to total investment in the exposition; and (iii) extent of intangible (social, psychological, ''good will'') benefits accruing to the city/region/nation including the solution or amelioration of any national/local problems.

13. *Exhibit No. 13.* A statement committing the applicant to develop and complete an environmental impact statement which complies with section 102(2)(c) of the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. 4331). Sample copies of environmental impact statements may be obtained from the Director. Prior to the Director's submitting a report to the Secretary containing his findings on the application for Federal recognition pursuant to §310.4, the applicant must have completed the required Environmental Impact Statement (EIS), in a form acceptable to the Department of Commerce.

14. *Exhibit No. 14.* A detailed set of general and special rules and regulations governing the exposition and participation in it, which, if Federal recognition is obtained, can be used by the Federal Government in seeking BIE registration.

15. *Exhibit No. 15.* A statement from the applicant agreeing to accept a U.S. Commissioner General, appointed by the President. He will be recognized as the senior Federal official and titular head of the exposition, final arbiter in disputes with exhibitors, and the official contact with foreign governments. The applicant should also agree to furnish the Commissioner General and his staff with suitable facilities in the host community during the development and operation of the exposition.

[40 FR 34107, Aug. 14, 1975. Redesignated and amended at 46 FR 57457, Nov. 24, 1981]

§ 310.4 Action on application.

(a) Upon receipt of an application, the Director will analyze the application and all accompanying exhibits to insure compliance with the provisions of § 310.3 and report his findings with respect thereto to the Secretary.

(b) If more than one applicant applies for Federal recognition for expositions to be held within three years or less of each other, the applications will be reviewed concurrently by the Director. The following standards will be considered in determining which if any of the competing applicants will be recommended for Federal recognition:

(1) The order of receipt of the applications by the Director, complete with all exhibits required by § 310.3.

(2) The financial plans of the applications. Primary consideration will be given to those applications which do not require Federal financing for exposition development. This does not extend to funding for a Federal pavilion, if one is desired.

(3) The relative merit of the applications in terms of their qualifications as tourism destination sites, both with respect to existing facilities and those facilities planned for the proposed exposition. If necessary, to assist in making this determination, the Director will appoint a panel of travel industry experts representing tour developers, the transportation, entertainment and hotel/motel industries for the purpose of studying the competing applications and reporting to the Director its views as to which proposed site best meets the above criteria. If such a panel is deemed necessary, the provisions of the Federal Advisory Committee Act (86 Stat. 770, 5 U.S.C. App. I) will be applicable.

(c) In analyzing the applications, the Director may hold public hearings with the objective of clarifying issues that might be raised by the application. If desired, the Director may utilize the services of an examiner.

(d) If the Director, in his discretion, decides to hold a public hearing, notice of such hearing shall be published in the FEDERAL REGISTER, and a copy of the notice shall be furnished to local newspapers. The notice shall state the subject to be considered and when and where the hearing will be held, specifically designating the date, hour, and place.

(e) The following general procedure shall govern the conduct of public hearings: (1) Stenographic minutes of the proceedings shall be made; (2) the names and addresses of all parties present or represented at the hearing shall be recorded; and (3) the Director or Examiner shall read aloud for the record and for the benefit of the public such parts of the Act and of these regulations as bear on the application. He shall also read aloud for the record and for the benefit of the public such other important papers, or extracts therefrom, as may be necessary for a full understanding of the issues which require clarification. The Director or Examiner shall impress upon the parties in attendance at the public hearing, and shall specifically state at the commencement of the hearing, that the hearing is not adversary in nature and that the sole objective thereof is to clarify issues that might have been raised by the application.

(f) Statements of interested parties may be presented orally at the hearing, or submitted in writing for the record.

(g) Within six months after receipt of a fully completed application and/or the adjournment of the public hearing, the Director shall submit his report containing his findings on the application to the Secretary.

§ 310.5 Report of the Secretary on Federal recognition.

If the Director's report recommends Federal recognition, the Secretary, within a reasonable time, shall submit a report to the President.

(a) The Secretary's report shall include: (1) An evaluation of the purposes

and reasons for the exposition; and (2) a determination as to whether guaranteed financial and other support has been secured by the exposition from affected State and local governments and from business and civic leaders of the region and others in amounts sufficient to assure the successful development and progress of the exposition.

(b) Based on information from, and coordination with the Department of Commerce the Secretary of State shall also file a report with the President that the exposition qualifies for recognition by the BIE.

§ 310.6 Recognition by the President.

If the President concurs in the favorable reports from the Secretaries of State and Commerce, he may grant Federal recognition to the exposition by indicating his concurrence to the two Secretaries and authorizing them to seek BIE registration.

§ 310.7 Statement for Federal participation.

If Federal participation in the exposition, as well as Federal recognition thereof is desired, the applicant shall in a statement to the Director outline the nature of the Federal participation envisioned, including whether construction of a Federal pavilion is contemplated. (It should be noted, however, that before Federal participation can be authorized by the Congress under the Act, the exposition must have (i) met the criteria for Federal recognition and be so recognized, and (ii) been registered by the BIE. Although applicants need not submit such a statement until these prerequisites are satisfied, they are encouraged to do so.) Where the desired Federal participation includes a request for construction of a Federal pavilion, the statement shall be accompanied by the following exhibits:

1. *Exhibit No. 1.* A survey drawing of the proposed Federal pavilion site, showing its areas and boundaries, its grade elevations, and surface and subsoil conditions.

2. *Exhibit No. 2.* Evidence of resolutions, statutes, opinions, etc., as to the applicant's ability to convey by deed the real property comprising the proposed Federal pavilion site in fee-simple and free of liens and encumbrances to the Federal Government. The only consideration on the part of the Government for the conveyance of the property shall be the Government's commitment to participate in the exposition.

3. *Exhibit No. 3.* A certified copy of the building code which would be applicable should a pavilion be constructed.

4. *Exhibit No. 4.* An engineering drawing showing the accessibility of the proposed pavilion site to utilities (e.g., sewerage, water, gas, electricity, etc.).

5. *Exhibit No. 5.* A statement setting forth the security and maintenance and arrangements which the applicant would undertake (and an estimate of their cost) while a pavilion is under construction.

6. *Exhibit No. 6.* A study pursuant to Executive Order 11296 of August 10, 1966, entitled ''Evaluation of flood hazard in locating Federally owned or financed buildings, roads and other facilities and in disposing of Federal land and properties.''

§ 310.8 Proposed plan for Federal participation.

(a) Upon receipt of the statement, and the exhibits referred to in § 310.7, the Director shall prepare a proposed plan in cooperation with other interested departments and agencies of the Federal Government for Federal participation in the exposition.

(b) In preparing the proposed plan for Federal participation in the exposition, the Director shall conduct a feasibility study of Federal participation including cost estimates by utilizing the services within the Federal Government, professional consultants and private sources as required and in accordance with applicable laws and regulations.

(c) The Director, in the proposed plan for Federal participation in the exposition, shall determine whether or not a Federal pavilion should be constructed and, if so, whether or not the Government would have need for a permanent structure in the area of the exposition or whether a temporary structure would be more appropriate.

(d) The Director shall seek the advice of the Administrator of the General Services Administration to the extent necessary in carrying out the proposed plan for Federal participation in the exposition.

(e) Upon completion of the proposed plan for Federal participation in the exposition, the Director shall submit the plan to the Secretary.

§ 310.9 Report of the Secretary on Federal participation.

Upon receipt of the Director's proposed plan for Federal participation, the Secretary, within a reasonable time, shall submit a report to the President including: (a) Evidence that the exposition has met the criteria for Federal recognition and has been so recognized; (b) a statement that the exposition has been registered by the BIE; and (c) a proposed plan for the Federal participation referred to in § 310.8.

PART 315—DETERMINATION OF BONA FIDE MOTOR-VEHICLE MANUFACTURER

Sec.

AUTHORITY: Headnote 2, subpart B, part 6, schedule 6, Tariff Schedules of the United States (19 U.S.C. 1202); sec. 501(2) of Title V, Automotive Products Trade Act of 1965 (19 U.S.C. 2031).

SOURCE: 45 FR 42214, June 23, 1980, unless otherwise noted. Redesignated at 53 FR 52115, Dec. 27, 1988.

§ 315.1 Scope and purpose.

The purpose of this part is to set forth regulations implementing headnote 2 to subpart B, part 6, schedule 6 of the Tariff Schedules of the United States as proclaimed by Proclamation No. 3682 of October 21, 1965 (3 CFR 140–65 Comp.). issued pursuant to the Automotive Products Trade Act of 1965 (19 U.S.C. 2031), by establishing a procedure under which a person may apply to be determined a bona fide motor-vehicle manufacturer. Under headnote 2 to subpart B, part 6, schedule 6 of the Tariff Schedules of the United States, whenever the Secretary of Commerce has determined a person to be a bona fide motor-vehicle manufacturer, such person is eligible to obtain duty-free importation of certain Canadian articles and to issue certain orders, contracts, or letters of intent under or pursuant to which other persons, not themselves bona fide motor-vehicle manufacturers, may obtain duty-free treatment for such Canadian articles. The responsibilities of Secretary of Commerce relating to the development, maintenance and publication of a list of bona fide motor-vehicle manufacturers and the authority to promulgate rules and regulations pertaining thereto have been delegated to Under Secretary for International Trade, Department of Commerce pursuant to Department of Commerce Organization Order 40–1, Amendment 9 of January 22, 1984 (49 FR 4538).

[45 FR 42214, June 23, 1980. Redesignated and amended at 53 FR 52115, Dec. 27, 1988]

§ 315.2 Definitions.

For the purpose of the regulations in this part and the forms issued to implement it:

(a) *Act* means the Automotive Products Trade Act of 1965 (79 Stat. 1016, 19 U.S.C. 2001 through 2033).

(b) *Under Secretary* means Under Secretary for International Trade of the Department of Commerce, or such official as may be designated by the Under Secretary to act in his or her behalf.

(c) *Motor vehicle* means a motor vehicle of a kind described in item 692.05 or 692.10 of subpart B, part 6, schedule 6, of the Tariff Schedules of the United States (excluding an electric trolley bus and a three-wheeled vehicle) or an automotive truck tractor.

(d) *Bona fide motor-vehicle manufacturer* means a person who upon application to the Under Secretary is determined by the Under Secretary to have produced no fewer than 15 complete motor vehicles in the United States during the 12-month period preceding the date certified in the application, and to have had as of such date installed capacity in the United States to produce 10 or more complete motor vehicles per 40-hour week. A person shall only be regarded as having had the capacity to produce a complete motor vehicle if his operation included the assembly of two or more major components (e.g., the attachment of a body to a chassis) to create a new motor vehicle ready for use.

(e) *Person* includes any individual, corporation, partnership, association, company, or any kind of organization.

(f) *United States* includes only the States, the District of Columbia and Puerto Rico.

[45 FR 42214, June 23, 1980. Redesignated and amended at 53 FR 52115, Dec. 27, 1988]

§ 315.3 Application.

Any person in the United States desiring to be determined a bona fide motor vehicle manufacturer shall apply to the Under Secretary by filing two copies of Form BIE–3 in accordance with the instructions set forth on the form and this part. Application forms may be obtained from the Under Secretary, District offices of the U.S. Department of Commerce, or from U.S. Collectors of Customs, and should be mailed or delivered to the:

U.S. Department of Commerce, International Trade Administration, Office of Automotive Industry Affairs—APTA, 14th and Constitution Avenue, NW., Room 4036, Washington, DC 20230.

[45 FR 42214, June 23, 1980. Redesignated and amended at 53 FR 52115, Dec. 27, 1988]

§ 315.4 Determination by the Under Secretary.

(a) As soon as practicable after receipt of the application, the Under Secretary shall determine whether an applicant has produced no fewer than 15 complete motor vehicles in the United States during the 12-month period preceding the date certified in the application and as of such date, had installed capacity in the United States to produce 10 or more complete motor vehicles per 40 hour week. The Under Secretary may request such additional data from an applicant as he may deem appropriate to establish whether the applicant has satisfied the requirements of this part.

(b) A determination by the Under Secretary under this part shall be effective for a 12-month period to begin on the date as of which the Under Secretary determines that the applicant qualified under this part. Within 60 days prior to the termination of such period, a bona fide motor vehicle manufacturer may apply for another determination under this part.

(c) The Under Secretary will promptly notify each applicant in writing of the final action taken on his application.

[45 FR 42214, June 23, 1980. Redesignated and amended at 53 FR 52115, Dec. 27, 1988]

§ 315.5 Maintenance and publication of a list of bona fide motor-vehicle manufacturers.

The Under Secretary shall maintain and publish from time to time in the FEDERAL REGISTER, a list of the names and addresses of bona fide motor vehicle manufacturers, and the effective dates from each determination.

[45 FR 42214, June 23, 1980. Redesignated and amended at 53 FR 52115, Dec. 27, 1988]

PART 325—EXPORT TRADE CERTIFICATES OF REVIEW

Sec.

AUTHORITY: Title III of the Export Trading Company Act, Pub. L. 97–290 (96 Stat. 1240–1245, 15 U.S.C. 4011–4021).

SOURCE: 50 FR 1806, Jan. 11, 1985, unless otherwise noted.

§ 325.1 Scope.

This part contains regulations for issuing export trade certificates of review under title III of the Export Trading Company Act, Pub. L. 97–290. A holder of a certificate of review and the members named in the certificate will have specific protections from private treble damage actions and government criminal and civil suits under U.S. Federal and State antitrust laws for the

export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

§ 325.2 Definitions.

As used in this part:

(a) *Act* means title III of Pub. L. 97–290, Export Trade Certificates of Review.

(b) *Antitrust laws* means the antitrust laws, as the term is defined in the first section of the Clayton Act (15 U.S.C. 12), section 5 of the Federal Trade Commission Act (15 U.S.C. 45) (to the extent that section 5 prohibits unfair methods of competition), and any State antitrust or unfair competition law.

(c) *Applicant* means the person or persons who submit an application for a certificate.

(d) *Application* means an application for a certificate to be issued under the Act.

(e) *Attorney General* means the Attorney General of the United States or his designee.

(f) *Certificate* means a certificate of review issued pursuant to the Act.

(g) *Control* means either (1) holding 50 percent or more of the outstanding voting securities of an issuer; or (2) having the contractual power presently to designate a majority of the directors of a corporation, or in the case of an unincorporated entity, a majority of the individuals who exercise similar functions.

(h) *Controlling entity* means an entity which directly or indirectly controls a member or applicant, and is not controlled by any other entity.

(i) *Export conduct* means specified export trade activities and methods of operation carried out in specified export trade and export markets.

(j) *Export trade* means trade or commerce in goods, wares, merchandise, or services that are exported, or are in the course of being exported, from the United States or any territory of the United States to any foreign nation.

(k) *Export trade activities* means activities or agreements in the course of export trade.

(l) *Member* means an entity (U.S. or foreign) or a person which is seeking protection under the certificate with the applicant. A member may be a partner in a partnership or a joint venture; a shareholder of a corporation; or a participant in an association, cooperative, or other form of profit or nonprofit organization or relationship, by contract or other arrangement.

(m) *Method of operation* means any method by which an applicant or member conducts or proposes to conduct export trade.

(n) *Person* means an individual who is a resident of the United States; a partnership that is created under and exists pursuant to the laws of any State or of the United States; a State or local government entity; a corporation, whether it is organized as a profit or nonprofit corporation, that is created under and exists pursuant to the laws of any State or of the United States; or any association or combination, by contract or other arrangement, between or among such persons.

(o) *Secretary* means the Secretary of Commerce or his designee.

(p) *Services* means intangible economic output, including, but not limited to—

(1) business, repair, and amusement services,

(2) management, legal, engineering, architectural, and other professional services, and

(3) financial, insurance, transportation, informational and any other data-based services, and communication services.

(q) *United States* means the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

§ 325.3 Applying for a certificate of review.

(a) *Place of filing.* The applicant shall submit an original and two copies of a completed application form (ITA 4093–P, OMB control number 0625–0125) by personal delivery during normal business hours or by first class mail to the Office of Export Trading Company Affairs, Room 5618, International Trade Administration, Department of Commerce, Washington, DC 20230. Although

not required, the applicant should consider using registered mail or some other delivery method that provides evidence of receipt.

(b) *Contents of application.* Any person may submit an application for certification. The application shall contain, where applicable, the information listed below. Some information, in particular the identification of goods or services that the applicant exports or proposes to export, is requested in a certain form (Standard Industrial Classification [SIC] numbers) if reasonably available. Where information does not exist in this form, the applicant may satisfy the request for information by providing it in some other convenient form. If the applicant is unable to provide any of the information requested or if the applicant believes that any of the information requested would be both burdensome to obtain and unnecessary for a determination on the application, the applicant should state that the information is not being provided or is being provided in lesser detail, and explain why.

(1) Name and principal address of the applicant and of its controlling entity, if any. Include the name, title, address, telephone number, and relationship to the applicant of each individual to whom the Secretary should address correspondence.

(2) The name and principal address of each member, and of each member's controlling entity, if any.

(3) A copy of any legal instrument under which the applicant is organized or will operate. Include copies, as applicable, of its corporate charter, bylaws, partnership, joint venture, membership or other agreements or contracts under which the applicant is organized.

(4) A copy of the applicant's most recent annual report, if any, and that of its controlling entity, if any. To the extent the information is not included in the annual report, or other documents submitted in connection with the application, a description of the applicant's domestic (including import) and export operations, including the nature of its business, the types of products or services in which it deals, and the places where it does business. This description may be supplemented by a chart or table.

(5) A copy of each member's most recent annual report, if any, and that of its controlling entity, if any. To the extent the information is not included in the annual report, or other documents submitted in connection with the application, a description of each member's domestic (including import) and export operations, including the nature of its business, the types of products or services in which it deals, and the places where it does business. This description may be supplemented by a chart or table.

(6) The names, titles, and responsibilities of the applicant's directors, officers, partners and managing officials, and their business affiliations with other members or other businesses that produce or sell any of the types of goods or services described in paragraph (b)(7) of this section.

(7)(i) A description of the goods or services which the applicant exports or proposes to export under the certificate of review. This description should reflect the industry's customary definitions of the products and services.

(ii) If it is reasonably available, an identification of the goods or services according to the Standard Industrial Classification (SIC) number. Goods should normally be identified according to the 7-digit level. Services should normally be identified at the most detailed SIC level available.

(iii) The foreign geographic areas to which the applicant and each member export or intend to export their goods and services.

(8) For each class of the goods, wares, merchandise or services described in paragraph (b)(7) of this section:

(i) The principal geographic area or areas in the United States in which the applicant and each member sell their goods and services.

(ii) For their previous two fiscal years, the dollar value of the applicant's and each member's (A) total domestic sales, if any; and (B) total export sales, if any. Include the value of the sales of any controlling entities and all entities under their control.

(9) For each class of the goods, wares, merchandise or services described in paragraph (b)(7) of this section, the

best information or estimate accessible to the applicant of the total value of sales in the United States by all companies for the last two years. Identify the source of the information or the basis of the estimate.

(10) A description of the specific export conduct which the applicant seeks to have certified. Only the specific export conduct described in the application will be eligible for certification. For each item, the applicant should state the antitrust concern, if any, raised by that export conduct. (Examples of export conduct which applicants may seek to have certified include the manner in which goods and services will be obtained or provided; the manner in which prices or quantities will be set; exclusive agreements with U.S. suppliers or export intermediaries; territorial, quantity, or price agreements with U.S. suppliers or export intermediaries; and restrictions on membership or membership withdrawal. These examples are given only to illustrate the type of export conduct which might be of concern. The specific activities which the applicant may wish to have certified will depend on its particular circumstances or business plans.).

(11) If the export trade, export trade activities, or methods of operation for which certification is sought will involve any agreement or any exchange of information among suppliers of the same or similar products or services with respect to domestic prices, production, sales, or other competitively sensitive business information, specify the nature of the agreement or exchange of information. Such information exchanges are not necessarily impermissible and may be eligible for certification. Whether or not certification is sought for such exchanges, this information is necessary to evaluate whether the conduct for which certification is sought meets the standards of the Act.

(12) A statement of whether the applicant intends or reasonably expects that any exported goods or services covered by the proposed certificate will re-enter the United States, either in their original or modified form. If so, identify the goods or services and the manner in which they may re-enter the U.S.

(13) The names and addresses of the suppliers of the goods and services to be exported (and the goods and services to be supplied by each) unless the goods and services to be exported are to be supplied by the applicant and/or its members.

(14) A proposed non-confidential summary of the export conduct for which certification is sought. This summary may be used as the basis for publication in the FEDERAL REGISTER.

(15) Any other information that the applicant believes will be necessary or helpful to a determination of whether to issue a certificate under the standards of the Act.

(16) (Optional) A draft proposed certificate.

(c) The applicant must sign the application and certify that (1) each member has authorized the applicant to submit the application, and (2) to the best of its belief the information in the application is true, correct, and fully responsive.

(d) *Conformity with regulations.* No application shall be deemed submitted unless it complies with these regulations. Applicants are encouraged to seek guidance and assistance from the Department of Commerce in preparing and documenting their applications.

(e) *Review and acceptance.* The Secretary will stamp the application on the day that it is received in the Office of Export Trading Company Affairs. From that date, the Secretary will have five working days to decide whether the application is complete and can be deemed submitted under the Act. On the date on which the application is deemed submitted, the Secretary will stamp it with that date and notify the applicant that the application has been accepted for review. If the application is not accepted for review, the Secretary shall advise the applicant that it may file the application again after correcting the deficiencies that the Secretary has specified. If the Secretary does not take action on the application within the five-day period, the application shall be deemed submitted as of the sixth day.

(f) *Withdrawal of application.* The applicant may withdraw an application by written request at any time before the Secretary has determined whether

to issue a certificate. An applicant who withdraws an application may submit a new application at any time.

(g) *Supplemental information.* After an application has been deemed submitted, if the Secretary or the Attorney General finds that additional information is necessary to make a determination on the application, the Secretary will ask the applicant in writing to supply the supplemental information. The running of the time period for a determination on the application will be suspended from the date on which the request is sent until the supplemental information is received and is considered complete. The Secretary shall promptly decide whether the supplemental information is complete, and shall notify the applicant of his decision. If the information is being sought by the Attorney General, the supplemental information may be deemed complete only if the Attorney General concurs. If the applicant does not agree to provide the additional information, or supplies information which the Secretary or the Attorney General considers incomplete, the Secretary and the Attorney General will decide whether the information in their possession is sufficient to make a determination on the application. If either the Secretary or the Attorney General considers the information in their possession insufficient, the Secretary may make an additional request or shall deny the application. If they consider the information in their possession sufficient to make a determination on the application, the Secretary shall notify the applicant that the time period for a determination has resumed running.

§ 325.4 Calculating time periods.

(a) When these regulations require action to be taken within a fixed time period, and the last day of the time period falls on a non-working day, the time period shall be extended to the next working day.

(b) The day after an application is deemed submitted shall be deemed the first of the days within which the Secretary must make a determination on the application.

§ 325.5 Issuing the certificate.

(a) *Time period.* The Secretary shall determine whether to issue a certificate within ninety days after the application is deemed submitted (excluding any suspension pursuant to § 325.3(f) of the time period for making a determination). If the Secretary or the Attorney General considers it necessary, and the applicant agrees, the Secretary may take up to an additional thirty days to determine whether to issue a certificate.

(b) *Determination.* The Secretary shall issue a certificate to the applicant if he determines, and the Attorney General concurs, that the proposed export trade, export trade activities and methods of operation will—

(1) Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant;

(2) Not unreasonably enhance, stabilize, or depress prices within the United States of the class of the goods, wares, merchandise or services exported by the applicant;

(3) Not constitute unfair methods of competition against competitors who are engaged in the export of goods, wares, merchandise or services of the class exported by the applicant; and

(4) Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

(c) *Concurrence of the Attorney General.* (1) Not later than seven days after an application is deemed submitted, the Secretary shall deliver to the Attorney General a copy of the application, any information submitted in connection with the application, and any other relevant information in his possession. The Secretary and the Attorney General shall make available to each other copies of other relevant information that was obtained in connection with the application, unless otherwise prohibited by law.

(2) Not later than thirty days before the day a determination on the application is due, the Secretary shall deliver a proposed certificate to the Attorney General for discussion and comment. If the Attorney General does not agree that the proposed certificate may be issued, he shall, not later than ten days before the day a determination on the application is due, so advise the Secretary and state the reasons for the disagreement. The Secretary with the concurrence of the Attorney General, may modify or revise the proposed certificate to resolve the objections and problems raised by the Attorney General, or deny the application.

(3) If the Attorney General receives the proposed certification by the date specified in the preceding paragraph and does not respond within the time period specified in that paragraph, he shall be deemed to concur in the proposed certificate.

(d) *Content of certificate.* The certificate shall specify the export conduct and all persons or entities which are protected from liability under the antitrust laws. The Secretary may certify the proposed export conduct contained in the application, in whole or in part, with such changes, modifications, terms, or conditions as are appropriate. If the Secretary intends to issue a certificate different from a draft certificate submitted by the applicant, the Secretary shall first consult with the applicant.

(e) *Certificate obtained by fraud.* A certificate shall be void *ab initio* with respect to any export conduct for which a certificate was obtained by fraud.

(f) *Minimum thirty-day period.* The Secretary may not issue a certificate until thirty days after the summary of the application is published in the FEDERAL REGISTER.

§ 325.6 Publishing notices in the Federal Register.

(a) Within ten days after an application is deemed submitted, the Secretary shall deliver to the FEDERAL REGISTER a notice summarizing the application. The notice shall identify the applicant and each member and shall include a summary of the export conduct for which certification is sought. If the Secretary does not intend to publish the summary proposed by the applicant, he shall notify the applicant. Within twenty days after the date the notice is published in the FEDERAL REGISTER, interested parties may submit written comments to the Secretary on the application. The Secretary shall provide a copy of such comments to the Attorney General.

(b) If a certificate is issued, the Secretary shall publish a summary of the certification in the FEDERAL REGISTER. If an application is denied, the Secretary shall publish a notice of denial. Certificates will be available for inspection and copying in the International Trade Administration Freedom of Information Records Inspection Facility.

(c) If the Secretary initiates proceedings to revoke or modify a certificate, he shall publish a notice of his final determination in the FEDERAL REGISTER.

(d) If the applicant requests reconsideration of a determination to deny an application, in whole or in part, the Secretary shall publish notice of his final determination in the FEDERAL REGISTER.

§ 325.7 Amending the certificate.

An application for an amendment to a certificate shall be treated in the same manner as an original application. The application for an amendment shall set forth the proposed amendment(s) and the reasons for them. It shall contain any information specified in § 325.3(b) that is relevant to the determination on the application for an amendment. The effective date of an amendment will be the date on which the application for the amendment was deemed submitted.

§ 325.8 Expediting the certification process.

(a) *Request for expedited action.* (1) An applicant may be granted expedited action on its application in the discretion of the Secretary and the Attorney General. The Secretary and the Attorney General will consider such requests in light of an applicant's showing that it has a special need for a prompt decision. A request for expedited action should include an explanation of why expedited action is needed, including a

statement of all relevant facts and circumstances, such as bidding deadlines or other circumstances beyond the control of the applicant, that require the applicant to act in less than ninety days and that have a significant impact on the applicant's export trade.

(2) The Secretary shall advise the applicant within ten days after the application is deemed submitted whether it will receive expedited action. The Secretary may grant the request in whole or in part and process the remainder of the application through the normal procedures. Expedited action may be granted only if the Attorney General concurs.

(b) *Time period.* The Secretary shall determine whether to issue a certificate to the applicant within forty-five days after the Secretary granted the request for expedited action, or within a longer period if agreed to by the applicant (excluding any suspension pursuant to § 325.3(f) of the time period for making a determination). The Secretary may not issue a certificate until thirty days after the summary of the application is published in the FEDERAL REGISTER.

(c) *Concurrence of the Attorney General.* (1) Not later than ten working days before the date on which a determination on the application is due, the Secretary shall deliver a proposed certificate to the Attorney General for discussion and comment. If the Attorney General does not agree that the proposed certificate may be issued, he shall, not later than five working days before the date on which a determination on the application is due, so advise the Secretary and state the reasons for the disagreement. The Secretary, with the concurrence of the Attorney General, may revise the proposed certificate to resolve the objections and problems raised by the Attorney General, or deny the application.

(2) If the Attorney General receives the proposed certificate by the date specified in the preceding paragraph and does not respond within the time period specified in that paragraph, he shall be deemed to concur in the proposed certificate.

§ 325.9 Reconsidering an application that has been denied.

(a) If the Secretary determines to deny an application in whole or in part, he shall notify the applicant in writing of his decision and the reasons for his determination.

(b) Within thirty days after receiving a notice of denial, the applicant may request the Secretary to reconsider his determination.

(1) The request for reconsideration shall include a written statement setting forth the reasons why the applicant believes the decision should be reconsidered, and any additional information that the applicant considers relevant.

(2) Upon the request of the applicant, the Secretary and the Attorney General will meet informally with the applicant and/or his representative to discuss the applicant's reasons why the determination on the application should be changed.

(c) The Secretary shall consult with the Attorney General with regard to reconsidering an application. The Secretary may modify his original determination only if the Attorney General concurs.

(d) The Secretary shall notify the applicant in writing of his final determination after reconsideration and of his reasons for the determination within thirty days after the request for reconsideration has been received.

§ 325.10 Modifying or revoking a certificate.

(a) *Action subject to modification or revocation.* The Secretary shall revoke a certificate, in whole or in part, or modify it, as the Secretary or the Attorney General considers necessary, if:

(1) The export conduct of a person or entity protected by the certificate no longer complies with the requirements set forth in § 325.4(b);

(2) A person or entity protected by the certificate fails to comply with a request for information under paragraph (b) of this section; or

(3) The certificate holder fails to file a complete annual report.

(b) *Request for information.* If the Secretary or the Attorney General has reason to believe that the export trade, export trade activities, or methods of

operation of a person or entity protected by a certificate no longer comply with the requirements set forth in §325.4(b), the Secretary shall request any information that he or the Attorney General considers to be necessary to resolve the matter.

(c) *Proceedings for the revocation or modification of a certificate*—(1) *Notification letter*. If, after reviewing the relevant information in their possession, it appears to the Secretary or the Attorney General that a certificate should be revoked or modified for any of the reasons set forth in paragraph (a) above, the Secretary shall so notify the certificate holder in writing. The notification shall be sent by registered or certified mail to the address specified in the certificate. The notification shall include a detailed statement of the facts, conduct, or circumstances which may warrant the revocation or modification of the certificate.

(2) *Answer*. The certificate holder shall respond to the notification letter within thirty days after receiving it, unless the Secretary, in his discretion, grants a thirty day extension for good cause shown. The certificate holder shall respond specifically to the statement included with the notification letter and state in detail why the facts, conduct or circumstances described in the notification letter are not true, or if they are true, why they do not warrant the revoking or modifying of the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter.

(3) *Resolution of factual disputes*. Where material facts are in dispute, the Secretary and the Attorney General shall, upon request, meet informally with the certificate holder. The Secretary or the Attorney General may require the certificate holder to provide any documents or information that are necessary to support its contentions. After reviewing the statements of the certificate holder and the documents or information that the certificate holder has submitted, and upon considering other relevant documents or information in his possession, the Secretary shall make proposed findings of the factual matters in dispute. The Attorney General is not bound by the proposed findings.

(4) *Final determination*. The Secretary and the Attorney General shall review the notification letter and the certificate holder's answer to it, the proposed factual findings made under paragraph (c)(3) of this section, and any other relevant documents or information in their possession. If, after review, the Secretary or the Attorney General determines that the export conduct of a person or entity protected by the certificate no longer complies with the standards set forth in §325.4(b), the Secretary shall revoke or modify the certificate as appropriate. If the Secretary or the Attorney General determines that the certificate holder has failed to comply with the request for information under paragraph (b) of this section, or has failed to file a complete annual report, and that the failure to comply or file should result in revocation of modification, the Secretary shall revoke or modify the certificate as appropriate. The determination will be final and will be issued to the certificate holder in writing. The notice to the certificate holder shall include a statement of the circumstances underlying and the reasons in support of the determination. If the Secretary determines to revoke or modify the certificate, the decision shall specify the effective date of the revocation or modification; this date must be at least thirty days but not more than ninety days after the Secretary notifies the certificate holder of his determination. The Secretary shall publish notice in the FEDERAL REGISTER of a revocation or modification or a decision not to revoke or modify.

(d) *Investigative information*. In proceedings under this section, the Attorney General shall make available to the Secretary any information that has been obtained in response to Civil Investigative Demands issued under section 304(b)(3) of the Act. Unless prohibited by law, the Attorney General and the Secretary shall also make available to each other any other information which each is relying upon under these proceedings.

§ 325.11 Judicial review.

(a) *Review of certain determinations.* (1) Any person aggrieved by a final determination of the Secretary under § 325.5, § 325.7, § 325.9, or § 325.10 of these regulations may, within thirty days of the determination, bring an action in an appropriate district court of the United States to set aside the determination on the ground that it is erroneous. If a certificate is denied, the applicant may bring suit within thirty days after the notice of denial is published in the FEDERAL REGISTER, or, if the applicant seeks reconsideration, within thirty days after the Secretary publishes in the FEDERAL REGISTER notice of his determination after reconsideration.

(b) For purposes of judicial review, determinations of the Secretary are final when notice is published in the FEDERAL REGISTER.

(c) *Record for judicial review.* For purposes of judicial review, the record shall include all information presented to or obtained by the Secretary which had a bearing on the determination, the determination itself, the supporting statement setting forth the reasons for the determination, and the Attorney General's response to the Secretary indicating concurrence or nonconcurrence.

(d) *Limitation of judicial review.* Except as provided in paragraph (a) of this section, no agency action taken under the Act shall be subject to judicial review.

§ 325.12 Returning the applicant's documents.

(a) Upon the denial or withdrawal of an application for a certificate in its entirety, the applicant may request the return of all copies of the documents submitted by the applicant in connection with the application to the Department of Commerce or the Department of Justice. The applicant shall submit this request in writing to both the Secretary and the Attorney General.

(b) The Secretary and the Attorney General shall return the documents to the applicant within thirty days after they receive the applicant's request.

§ 325.13 Nonadmissibility in evidence.

If the Secretary denies, in whole or in part, an application for a certificate or for an amendment to a certificate, or revokes or amends a certificate, neither the negative determination nor the statement of reasons therefor shall be admissible in evidence in any administrative or judicial proceeding in support of any claim under the antitrust laws.

§ 325.14 Submitting reports.

(a) Not later than each anniversary of a certificate's effective date, the Secretary shall notify the certificate holder of the information to be included in the annual report. This report shall contain any changes relevant to the matters specified in the certificate, an update of the information contained in the application brought current to the anniversary date, and any other information the Secretary considers appropriate, after consultation with the Attorney General.

(b) Not later than forty-five days after each anniversary of a certificate's effective date, a certificate holder shall submit its annual report to the Secretary. The Secretary shall deliver a copy of the annual report to the Attorney General.

(c) Failure to submit a complete annual report may be the basis for modification or revocation of a certificate.

§ 325.15 Relinquishing a certificate.

A certificate holder may relinquish a certificate at any time through written notice to the Secretary. The certificate will cease to be effective on the day the Secretary receives the notice.

§ 325.16 Protecting confidentiality of information.

(a) Any information that is submitted by any person under the Act is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

(b)(1) Except as authorized under paragraph (b)(3) of this section, no officer or employee of the United States shall disclose commercial or financial information submitted under this Act

if the information is privileged or confidential, and if disclosing the information would cause harm to the person who submitted it.

(2) A person submitting information shall designate the documents or information which it considers privileged or confidential and the disclosure of which would cause harm to the person submitting it. The Secretary shall endeavor to notify these persons of any requests or demands before disclosing any of this information.

(3) An officer or employee of the United States may disclose information covered under paragraph (b)(1) of this section only under the following circumstances—

(i) Upon a request made by either House of Congress or a Committee of the Congress,

(ii) In a judicial or administrative proceeding subject to issuance of an appropriate protective order,

(iii) With the written consent of the person who submitted the information,

(iv) When the Secretary considers disclosure of the information to be necessary for determining whether or not to issue, amend, or revoke a certificate, if—

(A) The Secretary determines that a non-confidential summary of the information is inadequate; and

(B) The person who submitted the information is informed of the intent to disclose the information, and has an opportunity to advise the Secretary of the potential harm which disclosure may cause,

(v) In accordance with any requirement imposed by a statute of the United States.

(c) In any judicial or administrative proceeding in which disclosure is sought from the Secretary or the Attorney General of any confidential or privileged documents or information submitted under this Act, the Secretary or Attorney General shall attempt to notify the party who submitted the information of the request or demand for disclosure. In appropriate circumstances the Secretary or Attorney General may seek or support an appropriate protective order on behalf of the party who submitted the documents or information.

§ 325.17 Waiver.

The Secretary may waive any of the provisions of this part in writing for good cause shown, if the Attorney General concurs and if permitted by law.

PART 335—IMPORTS OF WORSTED WOOL FABRIC

Sec.
335.1 Purpose.
335.2 Definitions.
335.3 Applications to receive allocation.
335.4 Allocation.
335.5 Licenses.
335.6 Surrender, reallocation and license utilization requirement.

AUTHORITY: Title V of the Trade and Development Act of 2000 (Public Law No. 106-200) as amended by Trade Act of 2002 and the Miscellaneous Trade Act of 2004 (Public Law 108-429), Presidential Proclamation No. 7383 (December 1, 2000).

SOURCE: 66 FR 6461, Jan. 22, 2001, unless otherwise noted.

§ 335.1 Purpose.

This part sets forth regulations regarding the issuance and effect of licenses for the allocation of Worsted Wool Fabric under the TRQs established by Section 501 of the Act, including the new HTS categories 9902.51.15 and 9902.51.16 added by the amended Act.

[70 FR 25777, May 16, 2005]

§ 335.2 Definitions.

For purposes of these regulations and the forms used to implement them:

The Act means the Trade and Development Act of 2000 (Public Law No. 106–200, 114 Stat 251).

The Department means the United States Department of Commerce.

HTS means the Harmonized Tariff Schedule of the United States.

Imports subject to Tariff Rate Quotas are defined by date of presentation as defined in 19 CFR 132.1(d) and 19 CFR 132.11(a).

Licensee means an applicant for an allocation of the Tariff Rate Quotas that receives an allocation and a license.

Production means cutting and sewing garments in the United States.

Tariff Rate Quota or Quotas means the temporary duty reduction provided under Section 501 of the Act for limited

quantities of fabrics of worsted wool with average diameters greater than 18.5 micron, certified by the importer as suitable for use in making suits, suit-type jackets, or trousers (HTS heading 9902.51.11), and for limited quantities of fabrics of worsted wool with average diameters of 18.5 microns or less, certified by the importer as suitable for use in making suits, suit-type jackets, or trousers for the benefit of persons (including firms, corporations, or other legal entities) who cut and sew men's and boy's wool suits, suit-type jackets and trousers in the United States (HTS heading 9902.51.15), and worsted wool fabric with average fiber diameters of 18.5 microns or less for the benefit of persons (including firms, corporations, or other legal entities) who weave worsted wool fabric in the United States (HTS 9902.51.16).

Tariff Rate Quota Year means a calendar year for which the Tariff Rate Quotas are in effect.

Worsted Wool Fabric means fabric containing at least 85 percent by weight worsted wool.

Worsted Wool Suits means men's and boys' worsted wool suits, containing at least 85 percent by weight worsted wool fabric.

Worsted Wool Suit-Type Jackets mean men's and boys' worsted wool suit-type jackets, containing at least 85 percent by weight worsted wool fabric.

Worsted Wool Trousers means men's and boys' worsted wool trousers, containing at least 85 percent by weight worsted wool fabric.

[66 FR 6461, Jan. 22, 2001, as amended at 70 FR 25777, May 16, 2005]

§ 335.3 Applications to receive allocation.

(a) In each year prior to a Tariff Rate Quota Year, the Department will cause to be published a FEDERAL REGISTER notice soliciting applications to receive an allocation of the Tariff Rate Quotas.

(b) An application for a Tariff Rate Quota allocation must be received, or postmarked by the U.S. Postal Service, within 30 calendar days after the date of publication of the FEDERAL REGISTER notice soliciting applications.

(c) For applying for TRQs 9902.51.11 or 9902.51.15 during the calendar year of the date of the application, an applicant must have cut and sewed in the United States all three of the following apparel products: Worsted Wool Suits, Worsted Wool Suit-Type Jackets, and Worsted Wool Trousers. The applicant may either have cut and sewn these products on its own behalf or had another person cut and sew the products on the applicant's behalf, provided the applicant owned the fabric at the time it was cut and sewn. The application must contain a statement to this effect. For applying for TRQ 9902.51.16 during the calendar year of the date of the application, an applicant must have woven in the United States worsted wool fabrics with average fiber diameters of 18.5 microns or less, suitable for use in making suits, suit-type jackets, and trousers. The application must contain a statement to this effect.

(d) An applicant must provide the following information in the format set forth in the application form provided by the Department:

(1) *Identification*. Applicant's name, address, telephone number, fax number, and federal tax identification number; name of person submitting the application, and title, or capacity in which the person is acting for the applicant.

(2)(i) *Production*. Applicants for TRQs 9902.51.11 and 9902.51.15 must provide the name and address of each plant or location where Worsted Wool Suits, Worsted Wool Suit-Type Jackets, and Worsted Wool Trousers were cut and sewn or woven by the applicant and the name and address of all plants or locations that cut and sewed such products on behalf of the applicant. Production data, including the following: the quantity and value of the Worsted Wool Suits, Worsted Wool Suit-Type Jackets, and Worsted Wool Trousers cut and sewn in the United States by applicant, or on behalf of applicant, from fabric owned by applicant. This data must indicate actual production (not estimates) of Worsted Wool Suits, Worsted Wool Suit-Type Jackets and Worsted Wool Trousers containing at least 85 percent worsted wool fabric by weight with an average diameter of 18.5 microns or less. This data must also indicate actual production (not estimates) of Worsted Wool Suits, Worsted Wool

Suit-Type Jackets and Worsted Wool Trousers containing at least 85 percent worsted wool fabric by weight with average diameter greater than 18.5 microns. Production data must be provided for the first six months of the year of the application. This data will be annualized for the purpose of making Tariff Rate Quota allocations.

(ii) Applicants for TRQ 9902.51.16 must provide the name and address of each plant or location where Worsted Wool Fabric was woven by the applicant. The quantity and value of the Worsted Wool Fabric woven in the United States by applicant. This data must indicate actual production (not estimates) of Worsted Wool Fabric containing at least 85 percent worsted wool fabric by weight with an average diameter of 18.5 microns or less. For applications for the 2005 Tariff Rate Quota year, production data must be provided for full calendar year 2004. For allocations of Tariff Rate Quota years after 2005, production data must be provided for the first six months of the year of the application. This data will be annualized for the purpose of making Tariff Rate Quota allocations.

(3) *Worsted Wool Fabric.* Data indicating the quantity and value of the Worsted Wool Fabric used in reported production.

(4) *Certification.* A statement by the applicant (if a natural person), or on behalf of applicant, by an employee, officer or agent, with personal knowledge of the matters set out in the application, certifying that the information contained therein is complete and accurate, signed and sworn before a Notary Public, and acknowledging that false representations to a federal agency may result in criminal penalties under federal law.

(e) *Confidentiality.* Any business confidential information provided pursuant to this section that is marked business confidential will be kept confidential and protected from disclosure to the full extent permitted by law.

(f) *Record Retention:* The applicant shall retain records substantiating the information provided in § 335.3(d)(2), (3), and (4) for a period of 3 years and the records must be made available upon request by an appropriate U.S. government official.

[66 FR 6461, Jan. 22, 2001, as amended at 70 FR 25777, May 16, 2005]

§ 335.4 Allocation.

(a) For HTS 9902.51.11 and HTS 9902.51.15 each Tariff Rate Quota will be allocated separately. Allocation will be based on an applicant's Worsted Wool Suit production, on a weighted average basis, and the proportion of imported Worsted Wool Fabric consumed in the production of Worsted Wool Suits. In regards to HTS 9902.51.16 the Tariff Rate Quota will be allocated based on an applicant's Worsted Wool Fabric production, on a weighted average basis.

(b) For the purpose of calculating allocations for HTS 9902.51.11 and HTS 9902.51.15 only, Worsted Wool Suit production will be increased by the percentage of imported fabric consumed in the production of Worsted Wool Suits to total fabric consumed in this production. For example, if an applicant uses 30 percent imported fabric in the production of Worsted Wool Suits, that applicant's production level will be increased by 30 percent.

(c) The Department will cause to be published in the FEDERAL REGISTER its determination to allocate the Tariff Rate Quotas and will notify applicants of their respective allocation as soon as possible. Promptly thereafter, the Department will issue licenses.

[66 FR 6461, Jan. 22, 2001, as amended at 70 FR 25777, May 16, 2005]

§ 335.5 Licenses.

(a) Each Licensee will receive a license, which will include a unique control number. The license is subject to the surrender and reallocation provisions in § 335.6.

(b) A license may be exercised only for fabric entered for consumption, or withdrawn from warehouse for consumption, during the Tariff Rate Quota Year specified in the license. A license will be debited on the basis of date of entry for consumption or withdrawal from warehouse for consumption.

(c) A Licensee may import fabric certified by the importer as suitable for use in making suits, suit-type jackets,

or trousers under the appropriate Tariff Rate Quota as specified in the license (*i.e.*, under the Tariff Rate Quota for fabric of worsted wool with average fiber diameters greater than 18.5 micron or the Tariff Rate Quota for fabric of worsted wool with average fiber diameters of 18.5 micron or less) up to the quantity specified in the license subject to the Tariff Rate Quota duty rate. Only a Licensee or an importer authorized by a Licensee will be permitted to import fabric under the Tariff Rate Quotas and to receive the Tariff Rate Quota duty rate.

(d) The term of a license shall be the Tariff Rate Quota Year for which it is issued. Fabric may be entered or withdrawn from warehouse for consumption under a license only during the term of that license. The license cannot be used for fabric entered or withdrawn from warehouse for consumption after December 31 of the year of the term of the license.

(e) The importer of record of fabric entered or withdrawn from warehouse for consumption under a license must be the Licensee or an importer authorized by the Licensee to act on its behalf. If the importer of record is the Licensee, the importer must possess the license at the time of filing the entry summary or warehouse withdrawal for consumption (Customs Form 7501).

(f) A Licensee may only authorize an importer to import fabric under the license on its behalf by making such an authorization in writing or by electronic notice to the importer and providing a copy of such authorization to the Department. A Licensee may only withdraw authorization from an importer by notifying the importer, in writing or by electronic notice, and providing a copy to the Department.

(g) The written authorization must include the unique number of the license, must specifically cover the type of fabric imported, and must be in the possession of the importer at the time of filing the entry summary or warehouse withdrawal for consumption (Customs Form 7501), or its electronic equivalent, in order for the importer to obtain the applicable Tariff Rate Quota duty rate.

(h) It is the responsibility of the Licensee to safeguard the use of the license issued. The Department and the U.S. Customs Service will not be liable for any unauthorized or improper use of the license.

§ 335.6 Surrender, reallocation and license utilization requirement.

(a) Not later than September 30 of each Tariff Rate Quota Year, a Licensee that will not import the full quantity granted in a license during the Tariff Rate Quota Year shall surrender the allocation that will not be used to the Department for purposes of reallocation through a written or electronic notice to the Department, including the license control number and the amount being surrendered. The surrender shall be final, and shall apply only to that Tariff Rate Quota Year.

(b) For purposes of this section, ''unused allocation'' means the amount by which the quantity set forth in a license, including any additional amount received pursuant to paragraph (d) of this section, exceeds the quantity entered under the license, excluding any amount surrendered pursuant to paragraph (a) of this section.

(c) The Department will notify Licensees of any amount surrendered and the application period for requests for reallocation. A Licensee that has imported, or intends to import, a quantity of Worsted Wool Fabric exceeding the quantity set forth in its license may apply to receive additional allocation from the amount to be reallocated. The application shall state the maximum amount of additional allocation the applicant will be able to use.

(d) The amount surrendered will be reallocated to Licensees that have applied for reallocation. The entire amount surrendered will be reallocated pro-rata among applicants based on the applicant's share of the annual allocation, but will not exceed the amount set forth in the reallocation application as the maximum amount able to be used.

(e) A Licensee whose unused allocation in a Tariff Rate Quota Year exceeds five percent of the quantity set forth in its license shall be subject to having its allocation reduced in the subsequent Tariff Rate Quota Year. The subsequent Tariff Rate Quota Year allocation will be reduced from the

quantity such Licensee would otherwise have received by a quantity equal to 25 percent of its unused allocation from the prior year. A Licensee whose unused allocation in two or more consecutive Tariff Rate Quota Years exceeds five percent of the quantity set forth in its license shall have its allocation reduced in the subsequent Tariff Rate Quota Year by a quantity equal to 50 percent of its unused allocation from the prior year.

(f) No penalty will be imposed under paragraph (e) of this section if the Licensee demonstrates to the satisfaction of the Department that the unused allocation resulted from breach by a carrier of its contract of carriage, breach by a supplier of its contract to supply the fabric, act of God, or force majeure.

[66 FR 6461, Jan. 22, 2001, as amended at 70 FR 25777, May 16, 2005]